

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.181/2018

Babloo @ Mehroz Sardar Hussain Zaidi

...Versus...

Divisional Commissioner, Nagpur Division Nagpur and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Mir Nagman Ali, Counsel for petitioner
Mrs. Nandita Tripathy, APP for respondents

**CORAM : SMT. VASANTI A NAIK AND
ARUN D. UPADHYE, JJ.**

DATE : 21/02/2018

By this writ petition, the petitioner challenges the order of the Divisional Commissioner, Nagpur dated 31/1/2018 rejecting the application of the petitioner for parole leave in view of the provisions of Rule 4 (11) of the Prisons (Bombay Furlough and Parole) Rules, 1959.

According to the petitioner, who is convicted for the offence punishable under Section 302 of the Penal Code, his wife is seriously ill and his mother is required to undergo surgery, but the application of the petitioner for parole leave is rejected solely by relying on the provisions of Rule 4 (11) (as amended) of the Rules of 1959.

It is submitted that Rule 4 (11) is challenged in this Court by several convicts in writ petitions and after recording a *prima facie* view that Rule 4 (11) of the Rules is arbitrary and unreasonable this Court has granted parole leave and furlough leave to the said petitioners. It is submitted that since the

application of the petitioner is rejected solely on the basis of Rule 4 (11) of the Rules, the impugned order is liable to be set aside.

On hearing the learned Counsel for the parties, we find that there is much force in the submission made on behalf of the petitioner. We have considered the provisions of Rule 4 (11) of the Rules in more than a couple of writ petitions and we have *prima facie* found that the said rule is arbitrary and unreasonable. Only after the appeal is filed and the bail application is rejected, the prisoner undergoing the sentence would be required to file an application for parole or furlough leave. If a prisoner is on bail he would not be required to file the furlough or parole leave application at all. In the circumstances of the case, on parity, we wish to grant similar relief in favour of the petitioner, more so, when the mother and the wife of the petitioner are ill and it would be necessary for the petitioner to take care of them for some time.

Hence, for the reasons aforesaid, the criminal writ petition is allowed. The impugned order is quashed and set aside. The Divisional Commissioner is directed to pass an order granting parole leave to the petitioner on the condition that the petitioner furnishes the surety as is required by Rule 6 of the Rules of 1959. The respondents are directed to release the petitioner on parole leave within seven days from the date on which he furnishes the surety.

Order accordingly. No costs.

JUDGE

JUDGE