

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

Criminal Writ Petition No.234 of 2018

(Vijay Pralhad Varankar .vs. The Divisional Commissioner, Amravati and another)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr.S.D.Chande, Advocate for the petitioner with
Mr.A.S.Kinkhede, Advocate, Mr.Mir Nagman Ali, Advocate
and Mr.Aniket Waghdhare.
Mr.S.Y.Deopujari, P.P. for State/Respondents.

**CORAM : B.P.DHARMADHIKARI,
P. N. DESHMUKH AND
Z.A.HAQ, JJ.**

DATE : 11.10.2018.

1. The matter is placed before us for answering the following question :

“Whether Rule 4(13) of the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959, introduced by the notification dated 26-8-2016, creating an absolute bar to claim release on furlough leave and consequently Rule 19(2)(B)(i) of the Rules of 1959 to claim release on parole leave to the convict for the offence of rape is violative of Articles 14 and 21 of the Constitution, particularly when the offenders or convicts in other serious offences are entitled to such leave ?

2. Accordingly, we have heard learned Counsel/s Mr.S.D.Chande, Mr.Mir Nagman Ali, Mr.A.S.Kinkhede and Mr.Aniket Waghdhare in support of the petitioner/ prisoner. Mr.Deopujari, learned Public Prosecutor has opposed the contentions.

3. During the arguments, our attention has been invited to the fact that the provisions having bearing on prayer for parole have undergone amendment on 16.4.2018.

4. It also became clear that arguments of learned Counsel Mr.S.D.Chande based on entitlement to furlough as a condition precedent for regular parole is unwarranted because petitioner/prisoner has claimed parole to attend to his ailing wife under Rule 19(1). The impugned order itself shows that, on the earlier occasion, parole was sanctioned to him.

5. Emergency parole is regulated by Rule 19(1) of the Prisons (Bombay Furlough and Parole) Rules, 1959. It does not require entitlement to furlough as a pre-condition as is expressly mandated for regular parole by its sub-rule (2).

6. The petitioner sought parole under Rule 19(1) by moving an application on 13.10.2017. It was recommended by Police Authorities and also by Government Medical Officer.

7. In this situation, we find that answer to question as referred in present facts is not necessary. It becomes only academic. Impact of amendment also, therefore, need not be looked into.

8. However, as emergency parole has been sought

and period of about eleven months has already expired after the emergency is pressed into service as requested by learned Counsel Mr.Chande, we are inclined to grant the petitioner leave to move suitable application as per law afresh if occasion therefor still subsists.

9. We are aware that, in Full Bench, our jurisdiction may be limited only to answer the reference made. Hence, before granting this liberty, we have expressly asked the learned Public Prosecutor and in order to save time of Court, he fairly gave no objection and submits that if such application is moved, it shall be decided as expeditiously as possible.

10. We, therefore, grant the petitioner leave to move application afresh within one week from today with necessary documents. If such application is received, the Competent Authority shall take decision upon it promptly at the earliest and in any case, within next three weeks.

11. As answer to the question referred is not necessary, we accordingly dispose of reference as also Criminal Writ Petition.

(B.P.Dharmadhikari, J)

(P.N.Deshmukh, J)

(Z.A.Haq, J)