

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.925 OF 2018

Sunil @ Appa Nimba Patil,
Age: 35 Years, Occ. Nil Convict
No.10815,
R/o. At Mukati, Tq.and Dist.Dhule.
At present in Central Prison,
Aurangabad.

.. PETITIONER

VERSUS

1. The State of Maharashtra,
Through Under Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Divisional Commissioner,
Nashik.
3. The Superintendent of,
Central Prison, Nashik,
Dist. Nashik.

.. RESPONDENTS

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Mrs.B.B.Gunjel, Advocate for the petitioner
Mr.A.B.Chate, APP for the Respondent/State
Mr.Menezes Joslyn A., Advocate for applicant
in Cri. Application No.2235 of 2018

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**CORAM: S.S.SHINDE &
A.M.DHAVALA, JJ.**

Reserved on : 22.12.2018
Pronounced on : 09.01.2019

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2] This Petition takes exception to the order passed by respondent no.2 - the Divisional Commissioner, Nashik, dated 21st November, 2017 [Exhibit-B], and confirmed by respondent no.1 - Under Secretary, Home Department, Mantralaya, Mumbai on 27th April, 2018 [Exhibit-C].

3] It is the case of the petitioner that, he was convicted by the Additional Sessions Court, Dhule, for the offence punishable under Section 302, 307, 143 and 147 of the Indian Penal Code, by order dated 4th July, 2016. At present, he is undergoing life imprisonment at Nashik Road Central Prison, Nashik. Due to illness of his wife,

the petitioner applied for parole to the Divisional Commissioner, Nashik, on 11th July, 2017. After receipt of the said application, the Divisional Commissioner, Nashik, called police report from the Assistant Police Inspector, Marwad and the Inspector General of Police, Jalgaon, on 23rd August, 2017 and 25th October, 2017, respectively. It is stated in the said report that, during the period of parole, the petitioner will stay with his cousin brother, namely, Dinesh Ashok Patil at Shirsale, Taluka Amalner, District Jalgaon, and not at his native place at Mukati. The petitioner is the only person in his family to take care about the medical treatment of his wife.

4] It is further the case of the petitioner that, relying on the proposal of the Superintendent, Central Prison, Nashik, police reports, and the Notification dated 26th August, 2016, the Divisional Commissioner

has rejected the application of the petitioner for parole on 21st November, 2017, stating therein that, the second police report is in favour of the petitioner, but the witnesses and the complainant have objection to release the petitioner on parole; and even the medical certificate does not disclose any serious disease of his wife. Being aggrieved by the said order, the petitioner approached to respondent no.1 on 16th January, 2018, by filing Appeal. Near about three and half months the said appeal was pending before respondent no.1. Thereafter, on 27th April, 2018, respondent no. 1 has rejected the application of the petitioner on the ground that, the medical certificate produced by the petitioner is prior to one year, and certificate does not disclose any serious illness of his wife. Hence this Petition.

5] Learned counsel appearing for the petitioner submits that, as per the Government Notification dated 1st August, 2007, the application for parole/furlough has to be decided within 45 days. The petitioner has filed application for parole on 11th July, 2017, and the said application ought to have been decided on or before 25th August, 2017, as per the above mentioned Notification. Therefore, the said application has been decided by the Divisional Commissioner on 21st November, 2017, i.e. after three and half months from the date of application. Considering the facts and circumstances of the case, the order passed by respondent no.1 is illegal and against the principles of natural justice. The co-accused has filed Criminal Writ Petition No.1351/2017 before the High Court. In the said Writ Petition, the High Court has taken a view that, the petitioner therein to file application afresh

with Respondent authorities, accompanied with latest medical certificate / report in respect of ailment of his wife, and directed to decide the same within two weeks, without raising the same objections/grounds, which have been raised in the impugned order. Since the date of arrest i.e. on 29th January, 2014, the petitioner has not been released on parole / furlough. This is the first application of the petitioner for parole. Earlier to this application, he filed application for furlough, wherein the police report was not received in time, and therefore, the jail authorities closed the file of the petitioner for furlough without decision.

It is submitted that, the medical certificate is verified by the Government Medical Officer, therefore, there may not be any question to disbelieve it. The petitioner has also produced fresh medical certificate

dated 13th June, 2018, issued by the Government Medical Hospital, Jalgaon. Therefore, considering the afore-mentioned facts and circumstances, the order passed by respondent no.1 is illegal and deserves to be quashed and set aside.

6] Pursuant to the notices issued to the respondents, respondent no.2 has filed affidavit in reply and justified the reasons assigned in the impugned orders, rejecting the application of the petitioner to release him on parole.

7] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, and learned APP appearing for the respondent-State. With their able assistance, we have perused the pleadings in the Petition, grounds taken therein, and annexures thereto, and also the reply filed by respondent no.2. We have

carefully perused the reasons assigned by respondent authorities while rejecting the prayer of the petitioner for releasing him on parole for treatment of his ailing wife. It appears that, the Incharge Police Station Officer of Marwad Police Station in his report to the Superintendent of Police, Jalgaon, has mentioned that, he has ascertained from the relatives of the petitioner, who are ready to stand as surety that, after release the petitioner will stay at their village Shirsale, Taluka Amalner, District Jalgaon. According to the petitioner, the distance of the said village from the village of the petitioner, namely, Mukati, is 35 kilo meters away. It appears that, the family members of the victim / deceased have stated that, in case the petitioner is released on parole, there is danger to their life. However, the respondent authorities have not kept in view the fact

that, after release the petitioner is going to stay at Shirsale, Taluka Amalner, which is 35 kilo meters away from village Mukati. We have also carefully perused the medical certificates dated 17th March, 2017 issued by the Medical Officer, Class-I, Rural Hospital, Bhadgaon and also another certificate issued on 13th June, 2018 by the Medical Officer, General Hospital, Jalgaon respectively. Perusal of the said certificates would demonstrate the ailment of the wife of the petitioner. In that view of the matter, in our opinion the respondent authorities have not kept in view the aforesaid aspects, and mechanically rejected the application of the petitioner to release him on parole.

8] In that view of the matter, the impugned orders passed by respondent nos.1 and 2, stand quashed and set aside. The petitioner is given liberty to apply afresh for parole within two weeks from today. In

case such application is filed by the petitioner within two weeks from today, the respondent authorities to decide the same, as expeditiously as possible, however, within six weeks from receipt of such application. The petitioner is granted liberty to submit fresh medical certificate/papers, showing the ailment of his wife. The respondents shall keep in view the police report, already received from the Police Station, Marwad, which was forwarded to respondent no.2 through the Superintendent of Police, Jalgaon.

9] In case, the respondents wish to once again call police report, such exercise shall be done, as expeditiously as possible, however, within two weeks from the date of receipt of the application filed by the petitioner.

10] However, we make it clear that respondent no. 2 - Divisional Commissioner shall take decision. as expeditiously as possible, however, within six weeks from receipt of the fresh application from the petitioner, and communicate the said decision to the petitioner through Superintendent, Nashik Road Central Prision, Nashik.

11] Rule is made absolute on above terms. The Writ Petition stands disposed of accordingly.

12] In view of disposal of Criminal Writ Petition, Criminal Application No.2235 of 2018 does not survive, and the same stands disposed of accordingly.

[A.M.DHAHALE]
JUDGE

[S.S.SHINDE]
JUDGE

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