

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1460 OF 2018

Deepak @ Wireless s/o Subhash Shinde,
Age : 41 years, Occu. Nil, Convict No.6215,
R/o at Sanjay Nagar, Tq. Georai,
District Beed, at present in
Central Prison, Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra
2. The Divisional Commissioner,
Aurangabad
3. The Superintendent of
Central Prison,
Aurangabad

RESPONDENTS

Mrs. Bharati B. Gunjal, Advocate for the petitioner
Mr. D.R. Kale, A.P.P. for the respondents/State

CORAM : S.S. SHINDE AND
R.G. AVACHAT, JJ.

JUDGMENT RESERVED ON : 17th JANUARY, 2019
JUDGMENT PRONOUNCED ON : 24th JANUARY, 2019

JUDGMENT (PER : R.G. AVACHAT, J.):

Rule. Rule made returnable forthwith. With
the consent of learned counsel for the petitioner and
learned A.P.P., heard finally.

2. The petitioner, by this Writ Petition, under Articles 226 and 227 of the Constitution of India, seeks direction to the respondents for his release on parole leave.

3. Perused the documents relied upon.

4. The petitioner was convicted for the offences punishable under Sections 395, 396 and 397 of the Indian Penal Code ("IPC", for short) and sentenced to suffer life imprisonment. The petitioner's proposal for his release on parole has been rejected mainly on the ground of he having been convicted for the offences punishable under Sections 395 and 397 of the IPC.

5. The learned A.P.P. has relied on newly amended Rules 4(2) and 4(3) of the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018 ("Rules of 2018", for short), whereunder there is a disqualification for the release on furlough, of one who has been convicted of the offences punishable under Sections 392 to 402 (both inclusive) of the IPC.

6. The aims and objects of the scheme behind grant of parole and furlough are as under :-

- (i) To enable the inmate to maintain continuity with his family life and deal with the family matters;
- (ii) To save the inmate from the evil effects of continuous prison life;
- (iii) To enable the inmate to maintain constructive hope and active interest in the life.

. Furlough/parole is to enable the prisoner to have family association and to avoid ill-effects of continuous prison life. In other words, a prisoner is accorded social interaction, man being a social animal. Social life is brought into existence periodically for a prisoner by providing furlough/parole.

7. In the past, the petitioner had been released on furlough. He returned jail on the days on which his furlough/parole leave was to over. The petitionr has now sought for parole leave so as to meet his ailing son. The medical certificate is on record. Rules 4(2) and 4 (3) of the Rules of 2018 creating disqualification for release on furlough and parole on the ground of there being conviction for the offences punishable under Sections 392 to 402 of the IPC, have been recently introduced. The Rule is penal in nature. It needs no mention that penal provision always operates

prospectively. The issue in this regard has been referred to for a decision by a Full Bench of this Court.

8. It is true that this Court dismissed Criminal Writ Petition being No.1315 of 2018, on the ground of petitioner therein having been convicted for the offences punishable under Sections 376 and 394 of the IPC. The said Writ Petition was dismissed in view of the peculiar facts and circumstances of the said case. The petitioner therein was facing five more prosecutions for the offences punishable under Sections 395, 399, 402 224 and 379 of the IPC.

9. The petitioner had been released on furlough/parole in the past. True, once he had jumped furlough. For the said lapse, he has been duly punished. Considering the object behind grant of furlough/parole and in view of the fact that the son of the petitioner is not keeping well, we are inclined to allow the petition in terms of the following order.

10. The Superintendent of Central Prison, Aurangabad – respondent No.3 herein is directed to release the petitioner on parole leave pursuant to his

application dated 4th May, 2018. Rule is made absolute accordingly. The Writ Petition stands disposed of.

[R.G. AVACHAT]
JUDGE

[S.S. SHINDE]
JUDGE

npj/criwp1460-2018