

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

CRIMINAL WRIT PETITION NO. 1594 OF 2018

Sagar Vijay Kale (C-16868)
Central Prison Yerwada, Pune

..PETITIONER

VERSUS

1. State of Maharashtra
Through Divisional Commissioner,
Pune.
2. The State of Maharashtra
Through Superintendent Central Prison,
Yerwada, Pune.

..RESPONDENTS

....
Mr. R.A. Jaiswal, Advocate for petitioner
Mr. A.A. Jagatkar, A.P.P. for respondents
....

**CORAM : S.S. SHINDE AND
R.G. AVACHAT, JJ.
DATED : 16th JANUARY, 2019**

ORAL JUDGMENT (PER : S.S. SHINDE, J.)

Rule, made returnable forthwith. Heard finally with the consent of the parties.

2. This petition takes exception to the order passed by Respondent No.1 on 23rd October, 2018 and seeks further directions to the respondents to release the petitioner on parole for 45 days.

3. The learned Counsel for the petitioner submits that the reasons assigned in the impugned order, not sustainable in as much as when the petitioner was released earlier on parole / furlough and also on bail, he never misused the liberty. Therefore, the learned Counsel submits that the reason assigned in the impugned order, that in case the petitioner is released on parole there is danger to the life of the informant, is without any basis. He further invites our attention to the pleadings and grounds taken in the petition and submits that the petition may be allowed.

4. On the other hand the learned A.P.P., relying on the averments in the affidavit-in-reply filed by Respondent No.2, submits that the concerned Police Officer has recorded statement of the informant during enquiry and the informant stated that in case the petitioner is released, there is danger to his life. Therefore, the learned A.P.P. submits that the petition may be rejected.

5. We have considered the submissions of the learned Counsel for the petitioner and the learned A.P.P. for State. With their able assistance, we perused the pleadings, grounds taken in the petition, documents annexed thereto and the reply filed by the Deputy Superintendent of Yerwada Central Prison on behalf of the respondents. The petitioner has specifically pleaded in the petition that when he was released on earlier

occasion on parole / furlough and also on bail, he did not misused the liberty. Said assertion has not been controverted by the respondents. Therefore, it is clear that when the petitioner was released earlier on parole / furlough and also on bail, he has not misused the liberty or posed any danger to the life of the informant. In that view of the matter, in our opinion, Respondent No.2 while considering the application of the petitioner praying therein to release him on parole, ought to have considered his past record and also his conduct as and when he was released on parole / furlough and also on bail.

6. For the reasons aforesaid, in our opinion, the impugned order cannot sustain and accordingly same is quashed and set aside. The application of the petitioner is restored to its original file and the respondents are directed to consider the said application afresh and decide the same as expeditiously as possible, however within three weeks from today and shall not reject the same on the same reasons which are assigned in the impugned order. The Writ Petition is partly allowed. Rule made absolute in the above terms. Criminal Writ Petition stands disposed of accordingly. Parties to act upon the authenticated copy of the order.

(R.G. AVACHAT, J.)

(S.S. SHINDE, J.)

SSD