

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

CRIMINAL WRIT PETITION NO.1675 OF 2018

Ramesh s/o. Girjaram Bansode,
Age: 30 Years, Occ. Nil Convict
No.7870,
R/o. At present in Central Prison,
Aurangabad. **.. PETITIONER**

VERSUS

1. The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Aurangabad.
3. The Superintendent,
Central Prison, Aurangabad.

.. RESPONDENTS

...

Mrs.B.B.Gunjel, Advocate for the petitioner
Mr.K.N.Lokhande, APP for the Respondent/State

...

**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 19.12.2018
Pronounced on : 07.01.2019

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.3 i.e. Superintendent, Central Prison, Aurangabad on 10th April, 2018 [Exhibit-E], and also the order passed by respondent no.2 i.e. the Divisional Commissioner, Aurangabad, on 10th May, 2018 [[Exhibit-D].

3] It is the case of the petitioner that, he was convicted by the District and Sessions Court at Aurangabad, for the offence punishable under Section 302 r/w. 34 of the Indian Penal Code on 22nd August, 2014. At present, the petitioner is undergoing the sentence of life imprisonment in Central Prison at Aurangabad. Due to serious illness of his wife, he filed application for parole on 8th June, 2017. The said application was allowed, by order dated 2nd January, 2018. Thereafter, he was released on parole for 45

days, on 9th January, 2018. Meanwhile, the condition of his wife became serious. However, as per the Prison Rules, he applied for extension of parole on 18th January, 2018, i.e. within expiry of his parole period. After receipt of the said application, the Jail Authority called police report from the concerned Police Station. The Assistant Police Commissioner has filed police report, stating therein that, the illness of the petitioner is serious. Even the Police has recorded the statement of the Doctor about the illness of wife of the petitioner. The Doctor has specifically advised that, wife of the petitioner needs to undergo surgery, and because of her small clinic and unavailability of some required facilities, she advised to them to go to big Hospital. During parole period, there is no complaint against the petitioner. But the wife of the petitioner has not produced medical documents

in respect of tests conducted by her. It is also stated in the said report that, the police has no objection for extension of parole.

4] It is further the case of the petitioner that, considering the police report, the Divisional Commissioner, Aurangabad, has rejected the application of the petitioner on 10th May, 2018, on the ground that, the medical reason given in the police report does not disclose reality, and the wife of the petitioner had not produced any medical documents, including the recent medical report. Even she has not produced on record the blood report, sonography report and urine report. Therefore, as per the provisions of Rule 5 (19) (c) (3) of the Maharashtra Prisons [Bombay Furlough & Parole] [Amendment] Rules, 2016, the petitioner is not entitled to extend his parole. He was released on parole on 9th

January, 2018, immediately thereafter, the petitioner filed an application for extension of parole on 18th January, 2018 i.e. within expiry of his parole period. He was required to surrender before the jail authority on 23rd February, 2018. The jail authority has failed to decide his application within time. Thereafter, the jail authority has rejected the application of the petitioner on 10th May, 2018. After lapse of one and half month, the copy of order of rejection of his application was served to the petitioner. Already the petitioner surrendered before the jail authority on 25th March, 2018 i.e. after availing 30 days extension. Thereafter, respondent no.3 had issued show cause notice to the petitioner, stating therein that, due to overstay of 30 days, the punishment of deduction of remission of 90 days is imposed on the petitioner by applying the ratio 1:3. The petitioner replied the said notice on 3rd

April, 2018, stating therein that, due to serious illness of his wife, he applied for extension of parole. Due to pendency of his application before the Divisional Commissioner, Aurangabad, he surrendered before the Jail Authority late by 30 days. Hence this Petition.

5] Learned counsel appearing for the petitioner submits that, without considering the genuine reasons for his overstay, respondent no.3 has passed the impugned order on 10th April, 2018, thereby imposing the punishment of remission of 90 days by applying ratio of 1:3. One accused, namely, Shaikh Nasir @ Chunnu s/o. Shaikh Hasan had approached the High Court by filing Writ Petition No.638/2018 for extension of parole. The said Writ Petition has been rejected by the High Court on 2nd May, 2018. Thereafter, on 6th June, 2018, the Divisional Commissioner, Aurangabad has allowed the

application of the petitioner therein for an extension of parole. Respondent no.2 is not giving an equal treatment to similarly situated convicts, and playing his role as per his wish.

6] It is further submitted that, the police report is in favour of the petitioner. The police has also recorded the statement of the Doctor, and the Doctor has also opined serious illness of the wife of the petitioner. The concerned Police Officers have no objection to extend the parole of the petitioner. There is no complaint against the petitioner during leave period. Without considering the said aspects of the matter, the Divisional Commissioner has rejected the application of the petitioner. Therefore, the order passed by the Divisional Commissioner is illegal and against the principles of natural justice.

7] Pursuant to the notices issued to the respondents, respondent no.2 has filed affidavit in reply. It is stated in the said affidavit in reply that, the petitioner applied for parole to the Divisional Commissioner, on the ground of illness of his wife. The said application was allowed on 2nd January, 2018. The petitioner was released on parole for 45 days on 9th January, 2018. The petitioner filed application on 18th January, 2018, for extension of parole due to serious illness of his wife. Pursuant to the receipt of such application, the report was called from the Assistant Commissioner of Police, Chavani Division, Aurangabad, by letter dated 9th February, 2018, and after enquiry the Assistant Commissioner of Police, Chavani Division Aurangabad submitted adverse report on 12th March, 2018, and did not recommend for extension of parole on the ground that, wife

of the petitioner had not presented any medical certificate, testing papers and did not give information of recent treatment in the Hospital. The petitioner submitted medical certificate dated 15th January, 2018, which does not show serious illness of the wife of the petitioner. It is further stated that, the petitioner did not submit any other medical documents, including blood report, sonography report and urine report, so as to find out the illness of the wife of the petitioner, as mentioned in the medical certificate.

8] It is further stated in the said reply that, earlier Notification has been issued by the Home Department, Mantralaya, Mumbai in the Maharashtra Prisons [Mumbai Furlough and Parole] [Amendment] Rules, 2016, notified on 26th August, 2016, it is stated in Rule 19 (c) (iii) that, the prisoner shall be eligible for maximum of 45 days of parole in

a year which can be extended up to 60 days once in three years only under exceptional circumstances. It is stated that, the Notification of Home Department, Mantralaya, Mumbai, dated 16th December, 2008, the instructions are given for medical circumstances for granting parole. It is further stated that, considering the police report, medical report, Notification of Home Department, Mantralaya, Mumbai, dated 26th August, 2016, the application of the petitioner for parole was rejected. The extension of parole was rejected by the Divisional Commissioner, Aurangabad Division, Aurangabad on 10th May, 2018.

9] 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, annexures thereto, and the reply filed by respondent no.2. The relevant dates for the purpose of deciding this Petition, are as under:

10] The petitioner was released on parole for 45 days on 9th January, 2018. He filed application for extension of parole on 18th January, 2018, to respondent no.2. It appears that, the police report was called by respondent no.2, and the said report received by the office of respondent no. 2 on 12th March, 2018, and thereafter, respondent no.2 on 10th May, 2018, rejected the application of the petitioner for extension of parole.

11] The aforesaid sequence of events would make it clear that, the application filed by the petitioner for extension of parole before expiry of period of 45 days was not considered by the respondent promptly, and no decision was taken on the said

application before expiry of 45 days parole period. The petitioner within 10 days from his release on parole applied for extension of parole. There was sufficient time for the respondents to consider and take decision on the application filed by the petitioner for extension of parole, before completion of 45 days parole granted to the petitioner. However, the respondents have casually dealt with the application filed by the petitioner for extension of parole.

12] As already observed, the petitioner was released on 9th January, 2018, and 45 days i.e. parole period came to an end on 24th February, 2018. Respondent no.2, after receiving such report on 12th March, 2018, from the Assistant Commissioner of Police, had taken a decision on 10th May, 2018, thereby rejecting the application of the petitioner for extension of parole.

13] In the light of discussion herein above, there was clear laxity and casualness on the part of the respondents while dealing with the application filed by the petitioner for extension of parole. Therefore, the decision of respondent no.3 to deduct remission by applying ratio 1:3, is not at all sustainable. It is true that, it was not proper on the part of the petitioner to overstay after completion of 45 days. However, it appears that, the petitioner was expecting further extension of parole and in the process, he overstayed for 30 days. In the peculiar facts of this case, due to laxity of the respondents in dealing with the application filed by the petitioner for extension of parole, the petitioner cannot be punished by deducting his remission by applying the ratio 1:3. In the facts and circumstances of this case, the ends of justice would be met if the respondents are

directed to deduct only 30 days and not 90 days remission for overstay of the petitioner for 30 days.

14] In that view of the matter, the Criminal Writ Petition is partly allowed. The decision of the respondent authorities to deduct 90 days remission for overstay of the petitioner for 30 days, is quashed and set aside, and the respondents are directed to deduct 30 days period from the remissions for overstay of the petitioner for 30 days. Accordingly, the respondents are directed to take necessary procedural steps within one month from today.

We direct respondent no.1 to issue suitable directions / instructions to all concerned offices, Police Stations, and Departments to deal and take final decision on an application / applications for extension of parole within the period i.e.

before expiry of parole granted to the convict, and communicate the said decision to the concerned convict. It may be open for respondent no.1 to amend the statutory provision / procedure to ask the convict in whose favour parole is granted to file such application for an extension within stipulated period.

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

16] Copy of this order should be sent forthwith to respondent no.1 on mail / by fax / speed post or any other mode of fastest communication.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE