

IN THE HIGH COURT OF BOMBAY AT GOA.**CRIMINAL APPLICATION (MAIN) NO.40 OF 2019.**

Shri Rudolf Gomes, major of age,
Indian, C/o Esperance Fernandes,
Quarter No.12, II Floor, T. B. Hospital,
Bhatlem, St. Inez, Panaji, Goa
(Present in custody at Central Jail,
Colvale, through his next friend, Mrs.
Esperance Fernandes, Quarter No.12,
II Floor, T. B. Hospital, Bhatlem, St.
Inez, Panaji, Goa).

..... Petitioner.

Versus

Inspector General of Prisons,
Inspectorate General, Prisons,
Government of Goa, 1st Floor, Old
Education Dept. Bldg, 18th June Road,
Panaji, Goa.

..... Respondent.

Mr. R. Menezes, Advocate for the petitioners.

Mr. S. R. Rivankar, Public Prosecutor for respondent.

**Coram:- M. S. Sonak &
Prithviraj K. Chavan, JJ.
Date:- 5th February, 2019.**

ORAL JUDGMENT (Per M. S. Sonak, J.)

Heard Mr. R. Menezes, learned Counsel appearing for
the petitioner and Mr. S. R. Rivankar, learned Public Prosecutor
for respondent.

2. Rule. Rule is made returnable forthwith with the

consent and at the request of the learned Counsel for the parties.

3. Learned Public Prosecutor waives notice on behalf of the respondent.

4. The petitioner challenges the order dated 21.12.2018 by which his application for parole has been rejected. The ground for rejection is that during the last year, the petitioner was released on parole/furlough for almost 110 days.

5. Mr. Menezes learned Counsel for the petitioner, points out that since September 2018, the petitioner has not availed parole. He points out that his mother and brother are seriously ill and even the medical certificates have been produced. He further points out that the Authority have raised no suspicion or dispute regards the veracity or authenticity for what is set out in the medical certificates. He, therefore submits that parole was required to be granted to the petitioner in the present case.

6. Though, we find that, the petitioner, is availing excess parole or furlough and we also agree with Mr. Rivankar, learned Public Prosecutor, if this continues, the petitioner, will hardly serve any prison sentence. In peculiar facts of the case, we

propose to set aside the present order and to direct the respondent to release the petitioner on parole on this occasion. However, we expect that the petitioner while so on parole, will make appropriate arrangement to ensure that the needs of his mother and brother are taken care of at least to some extent. This is because the petitioner, cannot, on the basis of same reason choose to stay out of the prison for such lengths of time. Taking this into consideration, we, propose to set aside the impugned order and direct release of the petitioner on parole. Facilities of parole is really made available to address unforeseen situation, *inter alia* arising out of health issues of the parents or near relatives of the convict. On such basis, convict cannot routinely insist upon staying out of the prison. If records of the petitioner for the last year is examined, then, it is seen that for almost 110 days in the preceding nine months, the petitioner has been out of the prison on parole/furlough. This is not at all satisfactory state of affairs.

7. Therefore, in the peculiar circumstances of this case and for the reasons aforesaid, we set aside the impugned order dated 21.12.2018 and direct the respondent to pass appropriate orders for releasing the petitioner on parole, subject to usual terms and conditions. Besides, the Authorities, are also at liberty

to verify health status of the petitioner's mother as well as brother. If it is found that any incorrect particulars have been furnished, then, parole, need not be granted. Necessary orders to be made within 10 days from today.

8. Rule is made absolute in the aforesaid extent. There shall be no order as to costs.

9. All parties to act on the basis of an authenticated copy of this order.

PRITHVIRAJ K. CHAVAN,J.

M. S. SONAK, J.