

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.230 OF 2018

Mrs. Gayatri Fernandes
Aged 21 years,
w/o Mr. Ryan Fernandes
residing at H.No.993,
Oval Park, Porvorim,
Bardez Goa.

... Petitioner

Versus

1. The Under Secretary (Home II)
Govt. of Goa,
Home Department (G),
Secretariat, Porvorim,
Bardez Goa.

2. Public Prosecutor,
High Court Building,
AG's Office, High Court,
Panaji Goa.

... Respondents

Mr. T. George John, Advocate for the Petitioner.

Mr. P. Faldessai, Additional Public Prosecutor for the Respondents.

***Coram : M. S. Sonak &
Prithviraj K. Chavan, JJ.***

Date : 14th January, 2019

Oral Judgment (Per M. S. Sonak, J)

Heard Mr. T. George John, learned counsel for the Petitioner and Mr. P. Faldessai, learned Additional Public Prosecutor for the Respondents.

2. Rule. Rule returnable forthwith. Heard finally with the consent of the learned counsel for the parties. Mr. P. Faldessai, learned Additional Public Prosecutor waives notice on behalf of the Respondents.

3. In this petition, Mr. Ryan Fernandes, the husband of the Petitioner presses the relief of extension of period of parole of 60 days on the ground that he has to remain present with his wife in the course of infertility treatment at Mapusa clinic from 4th June, 2018 to 14th July, 2018 as per the doctor's report.

4. Mr. T. George John submits that such extension was necessary taking into consideration the emergent situation which has arisen in the matter. He submits that the doctor's report clearly states that the presence of Mr. Ryan Fernandes was necessary for the period

between 4th June, 2018 to 14th July, 2018. Mr. T. George John also relies upon the decision of the Madras High Court in *Mrs. Meharaj Vs The State represented by its Secretary to Government of Tamil Nadu*¹, and the decision of the Delhi High Court in WP (Cri.) No.364/2016. He submits that the prisoner on account of incarceration does not lose his fundamental rights to live with dignity and therefore, the parole, under the circumstance prayed for required to be granted.

5. Mr. Faldessai, learned Additional Public Prosecutor opposes the grant of any relief in this petition. He points out that this petition has in fact rendered infructuous. He points out that the Petitioner has thereafter applied for and even availed of the parole which is evident from the order dated 5th December, 2018 produced by him. Mr. Faldessai submits that the reason stated by the Petitioner does not constitute an emergent situation like death or serious illness and, therefore, there is no infirmity in the order dated 7th June, 2018 by which the extension of parole came to be denied to Mr. Ryan Fernandes. He submits that this petition is therefore be dismissed.

6. The extension of parole for 60 days was applied for whilst

¹ Habeas Corpus Petition No.1837 of 2017 dated 11th January, 2018

Mr. Ryan Fernandes was already on parole. The doctor's report upon which the reliance was placed stated that the presence of Mr. Ryan Fernandes was necessary alongwith the Petitioner- wife during the fertility treatment for 60 days from 4th June 2018 to 14th July, 2018. This period, has long expired and therefore, this petition is virtually rendered infructuous.

7. Much after this fact, Mr. Ryan Fernandes once again applied for the parole and was even granted the same. This is evident from the order dated 5th December, 2018, today, produced on record by the learned Addl. Public Prosecutor.

8. Besides, we find that Rule 324 of the Goa Prison Rules, 2006 provides that the parole may be granted to a prisoner in the event of emergent situations like death or serious illness of father, mother, brother, sister, spouse and children and also marriage of brother, sister and children. The circumstance suggested by the Petitioner or her husband Mr. Ryan Fernandes cannot be said to be a circumstance which is covered by Rule 324 of the Goa Prison Rules, 2006. Besides, Mr. Faldessai points out that Mr. Ryan Fernandes has been repeatedly applying for parole on such ground.

9. In the impugned order dated 7th June, 2018, Under Secretary (Home) has made a reference to the number of days on which Mr. Ryan Fernandes has availed of parole. This para reads thus :

“AND WHEREAS, it is observed that the convict prisoner No.09/07-Ryan Fernandes has availed substantial period of 154 days in the year 2015, 193 days in the year 2016, 129 days in the year 2017 and 74 days out of 140 days of the year 2018, as on 21/05/2018, all on the ground of various emergent situations. Imprisonment being judicial action delivered by the Hon'ble Courts and is meant to serve Justice. Imprisonment and parole have to be judiciously applied with reasonability as a criteria when read with Goa Prison Rules, 2006.”

10. The fact situation in the case before the Hon'ble Madras High Court was entirely different. Even in that case, temporary parole of only two weeks was granted to the prisoner. In the present case, Mr. Ryan Fernandes was already on parole and had thereafter applied for extension of parole by 60 days. There is absolutely no material produced on record that the presence of Mr. Ryan Fernandes was necessary throughout the said period. In any case, no situation of emergency was made out.

11. Ruling of the Hon'ble Delhi High Court also states that a prisoner, on account of incarceration does not lose his right to live

which right includes to live in dignity. In the facts of the present case such right of the Petitioner or her husband cannot be said to have been violated.

12. For all the aforesaid reasons, we see no merit in the present petition. Accordingly, this petition is dismissed. There shall be no order as to costs.

Prithviraj K. Chavan, J.

M. S. Sonak, J.

*at**