

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5686 OF 2018

Vishwanath Krishnaji Hagwane. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Ms.Vaishali S. Nimbalkar for the petitioner.
Ms.P.P.Shinde, APP for the respondent- State.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 20th February 2019.

P.C. :

In this petition, the challenge by the petitioner who is convict undergoing life sentence (Convict No.6463 in Kolhapur Central Prison) is to the orders passed by the Divisional Commissioner, Pune and the Appellate Authority rejecting the application for grant of parole. The grant of parole was sought by the petitioner on the ground of ill health. The application is rejected on the ground that when in the year 1984, the petitioner was released on parole, after expiry of 10,958 days from the date on which the period of parole was ended, he was arrested by police and brought to the prison. Thus, the petitioner was arrested after lapse of 30 years and brought to the prison. The authorities have applied sub-rule (10) of rule 4 of the Prisons (Bombay Furlough and Parole) Rules of 1959 (for short "the Rules of 1959"). Even assuming that the said Rules of 1959 dealing with parole as prevailing prior to 26th August 2016 are applicable, under the unamended Rules of 1959, the competent authority

retained a discretion not to grant parole. In this case, the discretion is exercised based on the fact that after the petitioner was released on parole, he was absconding for a period of 30 years. He was arrested and brought back to the jail after 30 years.

2. However, the reports dated 30th January 2019 and 11th February 2019 submitted by the Medical Officer of Kolhapur Central Prison suggest that the petitioner has been advised to under go Coronary Artery Bypass Surgery (for short “CABG”) and a surgery to repair hernia. The earlier orders indicate that the petitioner was unwilling to undergo the said surgeries in CPR hospital at Kolhapur. The age of the petitioner is more than 68 years. Today, the learned counsel appearing for the petitioner, on instructions of the son of the petitioner who is present in the Court, states that Sahyadri Super Speciality Hospital in Pune is willing to admit the petitioner in police escort and is willing to perform necessary procedure. A certificate dated 18th February 2019 issued by a Cardiologist of Sahyadri Super Speciality Hospital is tendered of record. The same is marked as “S-1” for identification.

3. As the petitioner has been advised to undergo CABG long back in the year 2016, he will have to be permitted to undergo said procedure as well as surgery for repair of hernia in a private hospital of his choice, but under a police escort without releasing him on parole.

4. The learned counsel appearing for the petitioner, on instructions from the petitioner’s son, states that the petitioner is willing to bear the cost of providing police escort.

5. Considering the fact that the petitioner was advised to undergo CABG long back in the year 2016, it is obvious that the State Government will take a sympathetic view while fixing the cost of escort and will demand minimum permissible amount from the petitioner.

6. Accordingly, we dispose of this petition by passing the the following order:

O R D E R

- (i) The orders which are impugned in this petition rejecting the application of the petitioner for grant of parole are hereby confirmed;
- (ii) We direct the State Government to allow the petitioner to get himself admitted to Sahyadri Super Speciality Hospital at Pune under a police escort for undergoing coronary angiography. If after undergoing coronary angiography, the hospital advises surgical intervention in the form of CABG or any other procedure, the respondent- State shall permit the petitioner to undergo the said surgery or procedure in the same hospital. If the surgery is required for repair of hernia, the said surgery will be undertaken in the same hospital;
- (iii) Needless to add that round o'clock adequate police escort shall be provided when the petitioner is taken to Sahyadri Super Speciality Hospital for check-up and is admitted to the said hospital for undergoing tests/ treatment/ surgery with a view to ensure that the petitioner does not abscond;

- (iv) The charges of the said hospital shall be borne by the petitioner. Even the charges of the police escort as may be fixed by the State Government shall be borne by the petitioner. As observed earlier, while fixing the charges of police escort, the State Government will take a sympathetic view and demand minimum permissible amount. The State Government will be also entitled to demand advance payment for escort fees;
- (v) Writ petition is disposed of with the above directions;
- (vi) An authenticated copy of this judgment and order shall be produced in the office of the Medical Officer in-charge of the Sahyadri Super Speciality Hospital who shall act upon the said authenticated copy.

(A.S.GADKARI, J.)

(A.S.OKA, J.)