

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.11 OF 2019**

Shri Sampat Babaso Kale,
Age about 59 years,
Occupation : Profession,
R/at. Lonand, Tal. Khandala,
District: Satara.

.....Petitioner

Vs.

- 1) The State of Maharashtra,
Through the Secretary,
Home Department, Mantralaya,
Mumbai.
- 2) Divisonal Commissioner,
Pune Division, Pune.
- 3) The Superintendent,
Yerwada Central Prison, Pune.
(Notice to be served on the A.P.P.
High Court, Mumbai.)

....Respondents.

Mr. Dilip Bodake for the Petitioner.
Ms. P.P. Shinde, APP for the Respondent-State.

**CORAM : A. S. OKA, AND
A. S. GADKARI, JJ.
DATE : 5th FEBRUARY, 2019.**

ORAL JUDGMENT (PER- A.S. OKA, J.):-

Heard. Rule. The learned APP waives service for the Respondents.

2 Forthwith taken up for final disposal.

3 The Petitioner has impugned the Order dated 6th January 2015 passed by the Divisional Commissioner, Pune Division, Pune, rejecting the Application made by him for grant of parole under Rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, "*the said Rules of 1959*") as the same stood before its amendment on 26th August, 2016. There is also a challenge to the Order dated 17th October, 2015 passed by the State Government by which the Order dated 6th January, 2015 is confirmed.

4 The grounds on which the Application for parole was rejected are as under:-

- a) The Petitioner was granted furlough in the year 2011 for a period of 30 days. There was a delay of 839 days in reporting back to Jail and therefore, an offence punishable under Section 224 of the Indian Penal Code has been registered against the Petitioner;

- b) The Petitioner was arrested and brought back to Jail after delay of 839 days and;
- c) Though the Petitioner's wife is suffering from ailment of spinal cord, there was no recommendation of the Surgeon that the wife needs surgery.

5 After having heard the learned counsel appearing for the Petitioner and the learned APP for the State, we find that the aforesaid grounds cannot be sustained. For the first time, by the amendment effected on 26th August, 2016, a provision was made in the said Rules of 1959 that disqualifications provided in Rule 4 for grant of furlough will also apply to grant of parole. Such a provision was not in existence when the Application made by the Petitioner was decided by the first impugned Order. Hence, the ground of reporting late will not *per-se* apply as a disqualification. In a given case, this gross conduct of the Petitioner could have been always considered by the Authorities.

6 Moreover, both the Competent Authority and the Appellate Authority were under an impression that the power under Rule 19 of the unamended Rule to grant parole could have been exercised only in a case where near relative mentioned in the said Rule was required to

undergo a surgery. The ground in Rule 19 as unamended is of serious illness of near relatives such as father, mother, brother, sister, spouse and children. Even in the case of a serious illness which does require surgical intervention, Rule 19 may be applicable.

7 In the present case, even the Appellate Authority in its Order has noted that the Petitioner's wife is suffering from slip disk syndrome with Neuritis to both legs. Depending upon its gravity, even this ailment can fall in the category of serious ailments.

8 Though, the ground given in the impugned Orders are not legal, the Petitioner has not produced any document indicating the present health condition of his wife. Therefore, by granting liberty to the Petitioner to produce documents in that behalf, we propose to direct the Competent Authority to reconsider his Application.

9 The second part of the challenge is to the Order dated 11th May, 2017 by which the Application for grant of furlough under the said Rules of 1959 has been rejected. The remedy of Appeal is available against the said Order. Accordingly, we pass the following Order:-

a) The impugned Orders dated 6th January, 2015

(Exhibit-E) and 17th October, 2015 (Exhibit-H) are hereby set aside;

- b) It will be open for the Petitioner to produce the documents showing the present health condition of his wife before the Divisional Commissioner, Pune Division, Pune, through the Jail Superintendent of Yerwada Central Prison;
- c) Within a period of three weeks from the date on which the documents are submitted by the Petitioner, the Divisional Commissioner Pune Division, Pune shall decide the Application made by the Petitioner afresh by applying the Rules which were prevailing on 6th January, 2015 in the light of the findings recorded in this Order;
- d) The Order passed by the Divisional Commissioner, Pune Division, Pune shall be communicated to the Petitioner;
- e) As regards third impugned Order dated 11th May, 2017, it will be open for the Petitioner to prefer an

Appeal before the concerned Appellate Authority. If such an Appeal is preferred within a period of one month from today, the same shall be decided in accordance of law, as expeditiously as possible;

- f) Rule is made partly absolute in the above terms.

(A.S. GADKARI, J.)

(A.S. OKA, J.)