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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.80 OF 2019

Angad Vitthal Gosavi
(through jail) ...Petitioner
vs.
The State of Maharashtra ...Respondent

Ms M.H.Mhatre, APP for the respondent-State

CORAM : A.S.OKA, &
A.S.GADKARI, JJ.
DATE : JANUARY 16, 2019

P.C.:

1 Perused the petition received through jail. Heard the learned APP for State. Rule. The learned APP waives services. Forthwith taken up for hearing.

2 The petitioner applied for parole. By invoking clause 10 of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short "the said Rules of 1959") the Competent Authority (the Divisional Commissioner) rejected the application for parole made by the petitioner. The Competent Authority stated that when the petitioner was released on parole in the year 1997, he did not report back and after lapse of 1571 days, the police arrested him. However, the impugned order itself mentions that in the years 2009 and 2012, the petitioner was granted furlough. On both the occasions, there was a delay

of only one day in reporting back by the applicant.

3 Therefore, notwithstanding the default committed in the year 1997, on two occasions, the petitioner was granted parole and he was late in reporting only by one day each. In the facts of the case, it cannot be held that in view of Sub-Rule 10 of Rule 4 of the said Rules of 1959, the petitioner is ineligible for grant of furlough and therefore, he is ineligible for grant of parole.

4 The report of the police as well as the report of the Superintendent of Yerwada Central Prison support the case of the petitioner. The ground on which the petitioner applied for parole was that his wife was to undergo a surgery.

5 Though the ground for rejection cannot be sustained, the Competent Authority will have to verify whether the ground pleaded for grant of parole subsists.

6 Accordingly, we pass the following order:

- (I) The impugned orders dated 28th June 2018 as well as 11th September 2018 are hereby quashed and set aside;
- (II) If the ground given by the petitioner for seeking parole still subsists, it will be open for the petitioner to produce certificates/ documents to that effect;

- (III) A copy of this order shall be provided by the Jail Superintendent to the petitioner and the petitioner be informed that it is open for him to submit documents/certificates showing that the ground mentioned in the application for parole still subsists. He may produce such documents within a period of two weeks from the date on which this order is communicated to him by the Jail Superintendent;
- (IV) If the petitioner submits fresh documents/certificates within the stipulated time, the Competent Authority shall re-consider the application of the petitioner as expeditiously as possible and in any event, within a period of one week from the date on which the documents/certificate are submitted by the petitioner;
- (V) We make it clear while reconsidering the application, the same cannot be rejected on the factual grounds mentioned in the impugned orders;
- (VI) Rule is made absolute on above terms;
- (VII) Criminal Application No.13 of 2019 does not survive and the same is disposed of.

(A.S.GADKARI,J.)

(A.S.OKA,J.)