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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.603 OF 2019

Faisal Attaur Rehman Shaikh ...Petitioner
vs.
The State of Maharashtra & Anr. ...Respondents

Ms Farhana Shah for the Petitioner
Mr.Arfan Sait, APP for the respondent-State

CORAM : A.S.OKA, &
 A.S.GADKARI, JJ.
DATE : FEBRUARY 8, 2019

P.C.:

1 Heard the learned counsel for the petitioner. The petitioner applied for grant of emergency parole under Sub-Rule 1 of Rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short "the said Rules"). The petitioner is detained in Yerwada Central Jail in connection with capital punishment imposed upon him. The application for emergency parole was rejected on the ground that under Sub-Rule 1 of Rule 19 of the said Rules, the cases of all convicted prisoners except foreigners and death sentenced prisoners are entitled to be considered for grant of emergency parole.

2 The submission of the learned counsel for the petitioner is that under Sub-Rule 1 of Rule 19, the petitioner could have been taken in police escort as parole was sought on the ground of death of his father. She also pointed out that after rejection of

application for parole by the impugned order, an application (Exhibit-D to the petition) was made by the petitioner to Jail Superintendent of Yerwada Central Prison seeking permission to speak to his mother on cell phone number mentioned in the said application to offer condolences. However, the said request has not been considered.

3 The learned APP opposed the petition by relying upon Sub-Rule 1 of Rule 19. On instructions, he states that the application made by the petitioner at Exhibit-D is still pending.

4 As regards grant of emergency parole, on perusal of clauses A and B of Sub-Rule 1 of Rule 19, it is apparent that in a given case it is permissible to grant parole under a police escort. However, clauses A and B of Sub-Rule 1 of Rule 19 specifically provide that all convicted prisoners except foreigners and death sentenced prisoners are entitled to apply for emergency parole. In the present case, the petitioner is death sentence prisoner. Hence, under Sub-Rule 1 of Rule 19 does not permit consideration of application for emergency parole.

5 However, we find that a very limited request was made by the petitioner on 14th January 2019 to the Jail Superintendent to allow him to speak to his mother on cell phone for giving condolences. Perusal of the application at Exhibit-D shows that

in the said application, the petitioner has disclosed cell phone numbers of his sister and mother. The prayer was to allow him to speak with his mother on one of the two cell phones by using the telephone facility available in the jail. We are surprised to note that this application is kept pending since 14th January 2019. Considering the nature of the request, immediate consideration of the said application was mandatory.

6 Hence, we pass the following order:

(I) The order dated 7/8th January 2019 rejecting the application of the petitioner for grant of emergency parole is confirmed;

(II) We direct the Jail Superintendent, Yerwada Central Prison to immediately decide the application made by the petitioner at Exhibit-D to the petition;

(III) If the application is allowed, immediate arrangement shall be made to enable the petitioner to speak to his mother as prayed for in his application;

(IV) The petition is disposed of on above terms;

(V) Though the petition is disposed of, for reporting compliance with the aforesaid directions, the petition shall be listed high upon board on 21st February 2019;

(VI) A copy of the order passed on the Exhibit-D shall be placed on record of this petition.

(A.S.GADKARI,J.)

(A.S.OKA,J.)