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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.661 OF 2019

Mahadev Ganpat Dengale ...Petitioner
vs.
The State of Maharashtra & Ors. ...Respondents

Mr.Manas Gawankar for the Petitioner
Mr.Arfan Sait, APP for the respondent-State

CORAM : A.S.OKA, &
SARANG V.KOTWAL, JJ.
DATE : FEBRUARY 15, 2019

P.C.:

1 Rule. The learned APP waives service for the respondent. Forthwith taken for final disposal.

2 An application was made by the petitioner under Sub-Rule 2 of Rule 19 under the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short "the said Rules") for grant of parole. Parole was sought on the ground that his wife was suffering from a serious ailment. The Competent Authority (the Divisional Commissioner, Nashik) by an order dated 22nd March 2018 rejected the application for grant of parole only on one ground. The said ground is that the Superintendent of Nasik Road Central Prison has not recommended his release.

3 We have perused the police report dated 12th

April 2018 submitted by the Sub Divisional Police Officer, Barshi, District Solapur. Though at one place the name of the other prisoner appears, on complete reading of the report, it is clear that it pertains to the petitioner. The Police report recommend the release of the petitioner on parole.

4 Against the order of the Competent Authority, the petitioner preferred an appeal before the State Government which was dismissed by an order dated 13th July 2018.

5 After having perused the order of the Appellate Authority, we find that for the first time the Appellate Authority has recorded a finding that the ailment of the wife of the petitioner was not serious. That ground was not taken in the impugned order of the Competent Authority. Secondly, the order shows non application of mind in as much as the Appellate Authority was under a wrong impression that the application made by the petitioner was for emergency parole under Sub-Rule 1 of Rule 19 of the said Rules. In fact the application was under Sub Rule 2 of Rule 19 of the said Rules.

6 The learned APP has produced for perusal of the Court the report of the Superintendent of Nashik Road Central Prison which is considered by the Competent Authority. The report itself records that the conduct of the petitioner was satisfactory. It appears from the page 2 of the said report that the

petitioner has not been penalised any time earlier for any default or misbehaviour. Therefore, there was no reason not to recommend parole. In fact, after mentioning that the conduct of the petitioner was satisfactory, without assigning any reason, the Jail Superintendent has stated that he was not recommending grant of parole to the petitioner.

7 Thus, both the impugned orders cannot be sustained.

8 The application for grant of parole was made by the petitioner in December 2017. Now, the petitioner has relied upon the fresh certificate dated 6th December 2018 about the health condition of his wife. Therefore, the application for grant of parole will have to be reconsidered by the Authorities after taking into consideration the said certificate.

9 Accordingly, we pass the following order:

- (I) Impugned orders dated 22nd March 2013 and 13th July 2018 are hereby quashed and set aside;
- (II) The Divisional Commissioner, Nashik shall re-consider the said application made by the petitioner for grant of parole under Sub-Rule 2 of Rule 19 of the said Rules of 1959 after considering the certificate dated 6th December 2018 (Exhibit F to the petition);
- (III) We make it clear that the application for

parole cannot be rejected on the ground that the same has not been recommended by the Jail Superintendent;

(IV) Appropriate order shall be passed by the Divisional Commissioner, Nashik in terms of the above directions within a period of two weeks from the date on which this order is communicated to the Divisional Commissioner;

(V) The office of Public Prosecutors to communicate this order to the Divisional Commissioner, Nashik;

(VI) The petition is disposed of in above terms.

(SARANG V.KOTWAL, J.)

(A.S.OKA, J.)