

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 946 OF 2019**

Mahesh Ashok Patil,
Age : 24 years, Occupation : Farmer,
Residing at Near Bhairavnath Temple,
Rumale Galli, Panchagaon,
Tal. Karveer, Dist. Kolhapur.
Convict No. C/7084,
and at presently lodged in Kolhapur
Central Prison, Kalamba, Kolhapur.
Vide Prisoner No. C-3769.

.....Petitioner

Vs.

- 1 The State of Maharashtra,
Through the Office of
Public Prosecutor, High Court,
Bombay.
- 2 The Homer Department,
Government of Maharashtra,
Main Building, 2nd Floor, Hutatma
Rajguru Chowk, Madam Cama Marg,
Mantralaya, Mumbai-400 032.
- 3 The Divisional Commissioner,
Pune Division, Pune.
- 4 The Jail Superintendent,
Kolhapur Central Prison,
Kalamba, Kolhapur-416 007.
- 5 The Senior Inspector of Police,
Kagal Police Station,
Dist. Kolhapur.
- 6 The Senior Inspector of Police,

Karveer Police Station,
Dist. Kolhapur.

....Respondents.

Ms. Harjeet Kaur for the Petitioner.

Mr. J.P. Yagnik APP for the Respondent-State.

**CORAM : A. S. OKA, AND
A. S. GADKARI, JJ.
DATE : 1st MARCH, 2019.**

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

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

2 Forthwith taken up for final disposal.

3 The Petitioner made an Application under clause (b) of Sub-Rule (2) of Rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short "*the said Rules of 1959*").

4 Parole was sought on the ground of serious ailment of the Petitioner's mother as doctors had advised the Petitioner's mother to undergo a surgery. The Divisional Commissioner, Pune Division rejected the Application for grant of parole on the ground that there is possibility that the Petitioner would administer threats to the Complainant and the Complainant's relatives and that a law and order situation is likely to be created if he is enlarged on parole.

5 In the Appeal preferred by the Petitioner, though the State Government did not interfere, but the State Government did not approve of the grounds on which the Application for parole was rejected by the Competent Authority. The Application for parole was rejected by the Appellate Authority on the ground that the documents showing the treatment extended to the Petitioner's mother have not been filed and therefore, it is not possible to ascertain from the certificate dated 28th May, 2018, whether the illness of the Petitioner's mother is serious.

6 Therefore, now the only issue to be considered is whether the impugned Order of the Appellate Authority can be sustained. In this Petition, the Petitioner is relying upon the case papers of January, 2019 of C.P.R Hospital and Government College, Kolhapur. A copy of the ultra-sonography report is also annexed. A certificate dated 1st February, 2019 issued by the Radiologist is annexed in which he has stated that the Petitioner's mother is advised to undergo surgery as early as possible. The documents which are annexed to the Petition at Exhibit (E) and (F) are required to be considered by the State Government.

7 Accordingly, we pass the following Order-

- a) The impugned Order dated 19th December, 2018 passed by the State Government is hereby quashed and set aside;
- b) We direct the State Government to reconsider the Appeal after taking into consideration the documents which are annexed as Exhibit (E) and (F) to this Petition (Pages 15 to 18);
- c) Appropriate Order shall be passed by the State Government as early as possible and in any event within a period of two weeks from the date on which this Judgment and Order is uploaded;
- d) We clarify that the grounds which are set out in the Order dated 26th September, 2018 passed by the Competent Authority will not be available for rejecting the prayer of the Petitioner;
- e) Rule is made partly absolute in the above terms.

(A.S. GADKARI, J.)

(A.S. OKA, J.)