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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.957 OF 2019

Santosh Dashrath Sonawane ...Petitioner
vs.
Deputy Inspector General
(Prisons) & Anr. ...Respondents

None for the Petitioner
Mr.Arfan Sait, APP for the respondents

CORAM : A.S.OKA, &
A.S.GADKARI, JJ.
DATE : MARCH 4, 2019

P.C.:

1 Rule. The learned APP waives service for the respondent. The application made by the petitioner for grant of furlough under the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short "the said Rules of 1959") has been rejected by the Competent Authority only on the basis of the disqualification contained in sub-Rule 1 of Rule 4 of the said Rules of 1959 on the ground that the petitioner is a habitual offender. An appeal was preferred by the petitioner before the Appellate Authority. By the order dated 28th December 2018, the Appellate Authority rejected the appeal. However, in addition to sub-Rule 1 of Rule 4, the Appellate Authority invoked disqualification in Sub-Rules 4, 6 and 20 of Rule 4. There are no specific reasons recorded by the Appellate Authority as to how and

why the grounds which are not held against the petitioner by the Competent Authority have been considered by the Appellate Authority. The Appellate Authority could not have added additional grounds of disqualification for the first time while dismissing the appeal preferred by the petitioner. Therefore, the order of the Appellate Authority is vitiated due to non application of mind and hence, the appeal will have to be heard afresh.

2 Accordingly, we pass the following order:

(I) The impugned order dated 28th December 2018 passed by the Appellate Authority is quashed and set aside and the Appellate Authority is directed to reconsider and decide the appeal afresh in the light of the observations made in this order;

(II) The office of the Public Prosecutor to forward a copy of this order to the Appellate Authority as well as to the petitioner (through the Jail Superintendent).

(III) Fresh order shall be passed in the appeal by the Appellate Authority within a period of three weeks from the date on which an authenticated copy of this order is received by the said Authority.

(IV) Rule is made partly absolute on above terms.

(A.S.GADKARI,J.)

(A.S.OKA,J.)