

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1000 OF 2019

Fahad Mustaq Patankar ... Petitioner

Versus

State of Maharashtra ... Respondents

Mr. Abdul Hafeez Kotwala for the Petitioner.

Mr.Arfan Sait, APP for the respondent State.

**CORAM : B.P. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : APRIL 04, 2019

P.C.:

Heard learned appointed counsel for the petitioner and the learned APP for the respondent State.

2. Parole to attend the ailing mother has been rejected on 24/09/2018 and it has been upheld by appellate authority on 19/12/2018. By placing reliance upon the Division Bench judgment of this court in the Criminal Writ Petition No. 33 of 2019 dated 7/2/2019 at Aurangabad Bench and judgment of Hon'ble Apex Court dated 17/1/2019 in Writ Petition No.235 of 2018, submission is since the petitioner is in jail since last more than

4.1/2 yeas, leave as prayed for must be allowed.

3. Learned APP points out that mother of the applicant was then staying with the sisters and apart from the petitioner, there are two other brothers who can look after her. Hence, presence of the petitioner is not essential. He further submits that Division Bench at Aurangabad has on 7/2/2019 considered the request for grant of furlough. According to him, Hon'ble Apex Court has on 17/1/2019 considered the provisions for grant of parole and furlough prevailing in the State of Rajasthan and the logic therein is not relevant in the State of Maharashtra.

4. The fact that the petitioner has two brothers and they can take care of mother is not in dispute. Petitioner is not claiming furlough and his entitlement to it needs to be worked out in accordance with the provisions of law. Once he becomes entitled to furlough, it is not required to give any reason for availing it.

5. The Division Bench at Aurangabad has considered the request for releasing the prisoners to avail furlough leave. That judgment is therefore, not relevant at the present facts. Similarly, Hon'ble Apex Court has considered the position prevailing in the State of Rajasthan. In any case, the provisions prevailing in Maharashtra do not fall for consideration there. That judgment

therefore, has no relevance in the present matter.

6. Authorities have looked into all facts and found the request for parole unsustainable. There is no jurisdictional error or perversity. Writ petition is accordingly rejected.

(PRAKASH D. NAIK, J.)

(B.P. DHARMADHIKARI, J.)