

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1912 OF 2019

Mohammed Majid Mohammed Shafi

...Petitioner

vs.

The State of Maharashtra and Ors.

...Respondents

Mr. Farhana Shah for the Petitioner.

Ms. M. H. Mhatre, APP for the Respondent/State.

**CORAM : B. P. DHARMADHIKARI &
SMT. SWAPNA S. JOSHI, JJ.
DATE : 17/06/2019.**

P.C.:

. The petitioner prisoner in train blast case is before this Court seeking parole for treating his ailing wife. He has pointed out the facts as under:

“8. The petitioner states that the said Application for parole leave was filed on the ground of his wife, Mrs. Farzana Yasim Majid who is terminally ill due to kidney failure, Oesto Arthritis, SLE Hypothyroidism, hypertension, cataract etc. and she also needs dialysis and kidney transplant surgery, as suggested vide Medical Certificate dated 22/10/2018 and the recent report dated 7/2/2019, given by Dr. Subrata Kumar Bhaumik, and nobody is there to look after her for providing her proper medical care and treatment and the expenses to be incurred for complete treatment therefore the Respo. No.2 could have allowed his Appeal by granting him release on Parole leave for at least 30 days initially and then if necessary it could have been extended looking into the need of the hour and the situation. Herewith annexed and marked as Exh.G(colly) are the Medical papers, reports etc. of his wife, Farzana Yasmin.

9. The Petitioner states that the Respondent No.2 rejected his Parole Leave Application on the basis of the

earlier police report filed by S.I. of Narkeldanga Police Station at Kolkatta, and the Respondent No.3 has also done the same.”

2. Learned counsel appearing for him submits that when objective behind providing parole leave is kept in mind bar prescribed by Rule 4(13) is unjust and unsustainable. It is pointed out that apart from Rule 4(13), the authority has also invoked Rule 4(4) of Maharashtra Prison (Furlough and Parole) Rules 1959. However, the alleged adverse police report is not based upon any factual evaluation and therefore non-existent one. Learned counsel states that this Court should impose appropriate terms and conditions, and permit the petitioner to proceed on parole leave to treat his ailing wife. Our attention is invited to the order dated 18/2/2019 in Criminal Writ Petition No.874/2018 at Aurangabad.

3. The matter was considered by this Court on 4/6/2019 and thereafter on 14/6/2019. On 14/6/2019 time was given to learned APP to obtain instructions from the authorities at Kolkatta. Learned APP has produced before us the communication dated 16/6/2019 sent by Officer-in-Charge, Homicide Squad, Detective Department, Kolkata Police, Lalbazar. The said officer has informed the Superintendent of Amravati Central Prison that the medical certificate supplied through Amravati Central Prison and annexed with the petition are genuine. We are taking that communication on record as “A”. Learned APP has also invited our attention to the police report which shows undesirability of permitting applicant to proceed on parole leave. It is taken on record and marked “B”.

4. On the basis of these documents, learned APP submits that the bar provided for in the Rules cannot be overlooked and the orders earlier passed by the Authorities must be maintained. Our attention is invited to the order dated 14/12/2018 passed by Divisional Commissioner on earlier

leave application and appellate order passed thereafter by the State Government in the matter. It is submitted that the order at Aurangabad does not consider the legal position and does not lay down any law on the point. Our attention is invited to orders passed by this Court to urge that there in Writ Petition No.5478/2018 a/w 244/2019 and 246/2019 vide order dated 8/3/2019 leave application have been rejected.

5. It appears that the present petitioner sought parole on same ground and it was rejected on 14/12/2018 by the Competent Authority. The Authority then found that the wife of petitioner has kidney and BP problem and she was not fully incompetent to obtain medical treatment. Old mother of petitioner was residing with the wife and to look after her, their sons and daughters were available. Adverse police report on same lines is annexed. The authority also takes note of fact that conviction is under MCOC and UAPA.

6. The Appellate Authority viz. State Minister (Home) appreciated these facts, considered the bar prescribed by Rule 4 (13) and dismissed the prisoner's appeal. Thereafter the present petition has been filed.

7. During arguments learned counsel for the petitioner also added that the wife of prisoner has also developed severe umbilical hernia.

8. The legal provisions which regulate release of prisoner on parole are very clear. It appears that since last more than 6 months the prisoner is attempting to obtain leave to treat his ailing wife. Paragraph Nos.8 and 9 of his application are already reproduced by us supra. These paragraphs point out that the wife is residing with minor daughter and there is nobody else to provide for her medical care and treatment. The

petitioner has stated that even arrangement for funds is required to be made. He is therefore seeking parole for 30 days initially.

9. In paragraph No.14 he has given age of minor daughter to be 10 years and of his mother to be 75 years. He has also pointed out that his father has expired way back in 1989.

10. Apart from legal bar which flows from Rule 4(13) mentioned supra, facts at hand also does not show any effort made during last 6 months to treat the wife. Only certificates showing her health have been produced on record.

11. We have already taken a view against petitioner in Criminal Writ Petition No.5478/2018 a/w 244/2019 and 246/2019 decided on 8/3/2019. We therefore do not find any perversity or jurisdictional error in the order passed by the Authority. We therefore find the petitioner not entitled to parole. The petition is rejected.

(SMT. SWAPNA S. JOSHI, J.)

(B. P. DHARMADHIKARI, J.)