

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

WRIT PETITION NO.4866 OF 2019

Essa@Anjum s/o Abdul Razzaq Memon

...Petitioner

vs.

The State of Maharashtra and Ors.

...Respondents

Mr. M. S. Chaudhari a/w M. M. Chaudhari for the Petitioner.

Mr. Arfan Sait, APP for the Respondent/State.

Mr. P. Wagh, Jail Superintendent, Nashik Road Central Prison. Mr. P. M. Nagawade, Gr-II, Nashik Jail, PI-Kamble, Mahim Police Station, PSI-Pathan, Mahim Police Station, ASO-Dhananjay Jagdhane.

**CORAM : B. P. DHARMADHIKARI &
SANDEEP K. SHINDE, JJ.**

DATE : 03/10/2019.

PC.:

. Oral leave to substitute word “Nashik” in place of “Aurangabad” in the description of respondent No.5 is granted. Necessary amendment be carried out immediately.

2. On 26/9/2019 this Court has passed the following order:

“ Heard for some time. Death has taken place on 31/8/2019 and mother of the petitioner has been buried on 1/9/2019. 40th day function is to be held on 9/10/2019.

2. Contention of the petitioner is about onerous conditions imposed in order dated 9/9/2019. Order is to release the petitioner on parole. Learned counsel for the petitioner states that escort charges of Rs.70,000/- per day are being demanded and no guidelines are still framed though

there are directions by this Court.

3. Learned APP is disputing this. He points out that he has received papers recently.

4. In this situation, issue notice to respondents returnable on 3/10/2019.”

3. We have heard respective counsel in the backdrop of said order. Perusal of impugned order dated 26/9/2019 itself shows that the petitioner was released earlier on furlough leave twice and thereafter on parole leave twice. On all 4 occasions he has reported back on due date voluntarily. The petitioner in this backdrop has questioned the insistence on use of police escort and demand of roughly Rs. 70,000/- per day for said escort. Contention is discretion available to the Authority has been arbitrarily used.

4. Learned APP upon instructions from the Authority which has passed the order submitted that escort charges are to be decided by the State Reserve Police and that exercise is still not undertaken. Thus, contention that amount of Rs.70,000/- per day as been demanded is erroneous.

5. It is further submitted that on earlier occasion situation was different. By notification issued on 16/4/2018 Maharashtra Prisons (Maharashtra Furlough and Parole) Rules have been amended and as the mother of the petitioner has expired on 31/8/2019, amended provisions are applicable. Amended provision mandates that the Authority ordering release must apply mind in terms of Rule 19(1)(B) and decide whether escort is essential or not. Here the prisoner is involved in Bombay bomb blast case 1993 and after granting of leave he would be going to very sensitive area. In this situation, Authority has found it necessary to order

escort there is, therefore no misuse of power.

6. Lastly, it is pointed out that the religious function has to be performed on 9/10/2019 only and at this stage there is no need of permitting the petitioner to proceed on leave for a period of 14 days.

7. After hearing respective learned counsel we find that the amendment introduced in the year 2018 gives discretion to the Authority. However, it cannot be said that said discretion was not available earlier. The relevant factors for deciding prayer for release and terms and conditions thereto do not undergo any change because of amendment. The petitioner was released on 4 occasions and he has reported back voluntarily on due dates.

8. When this conduct is kept in mind, insistence of escort or depositing charges therefor is unwarranted. Amendment has been made to Rules to help the Authority to exercise its discretion and not to cause any prejudice or disadvantage to the prisoner.

9. In this situation, we are inclined to direct the respondent to release the petitioner on parole for attending the religious function scheduled on 9/10/2019. He shall be released on 7/10/2019 and he shall report back on 11/10/2019

10. During this period he shall stay at the address to be furnished by him to the Authority before his release and he shall be available always at that address.

11. Once in every 24 hours he shall report to the police station having jurisdiction over the area in which he shall be available as

mentioned supra. It shall be open to respondent and said police station to pay surprise visit to check his availability at said residence. The petition is partly allowed and disposed of.

(SANDEEP K. SHINDE, J.)

(B. P. DHARMADHIKARI, J.)