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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4624 OF 2018

Uday Dhaku Sutar ...Petitioner
vs.
The State of Maharashtra ...Respondent

Mr.Daulat G. Khamkar for the Petitioner
Mr.J.P.Yagnik, APP for the respondent-State

CORAM : A.S.OKA, &
A.S.GADKARI, JJ.
DATE : FEBRUARY 26, 2019

P.C.:

1 Heard the learned counsel for the petitioner and the learned APP for State. The petitioner was granted parole under the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short 'the said Rules of 1959') on account of serious illness of his mother. He was released on parole on 2nd September 2015 and he was to report back on 3rd October 2015. The petitioner made applications on 8th September 2015 and 16th October 2015 for grant of extension of parole. The first application was for extension of parole till 1st November 2015 and the second application was for extension of parole till 1st December 2015. By order dated 30th November 2015, the State Government rejected the application for extension firstly on the ground that the petitioner has not produced any certificate issued by Nanavati

Hospital, Mumbai though according to his case his mother was taking treatment in the said hospital. The second ground is that the surgery of the petitioner's mother was not proposed.

2 The submission of the learned counsel for the petitioner is that the documents which are annexed on pages 8 and 9 of this petition were produced before the State Government along with other documents which are annexed. He pointed out that if the application would have been rejected in time, the petitioner would have surrendered. He pointed out that the petitioner went on reporting to the police station even after expiry of period of parole and only after the impugned order was passed on 30th November 2015, he surrendered on 2nd December 2015. His submission is that as a result of the delay in surrendering, the petitioner is being penalised by cutting his remission. He urged that the delay in surrendering was due to delay in passing the order.

3 We have considered the submissions. The application for parole was made by the petitioner under Rule 19 of the said Rules of 1959 (as existed prior to 26th August 2015). The ground provided in Rule 19 of the said Rules of 1959 is of serious illness of near relatives such as father, mother etc.

4 As stated earlier, the petitioner was released on parole on 2nd September 2015. Within six days of

his release, he applied on 8th September 2015 for extension of parole on the ground that knee replacement surgery of his mother was postponed. A certificate dated 7th September 2015 was produced along with the said application which is signed by Dr.J.J.Patel, M.B.B.S. It refers to the fact that the petitioner's mother is taking treatment in Nanavati Hospital and she requires surgery for correction on both the knee joints. However, he has not mentioned that the surgery was fixed on a particular day. Moreover, he is only a General Practitioner. The petitioner also produced case papers/prescriptions issued by Dr.Atul M. Panghate. The letterhead show that the said Doctor is not attached to Nanavati Hospital. The petitioner produced radiological report dated 12th October 2015 which merely notes an impression that there are Osteoarthritis changes. Taking the said documents as correct, it is impossible to come to a conclusion that these documents indicate that petitioner's mother was suffering from serious illness. None of these documents were issued by the Nanavati Hospital as observed in the impugned order. Therefore, no fault can be found with the impugned orders when the prayer for extension of parole was rejected.

5 However, there is some merit in the contention of the petitioner that when he applied for extension of parole before the expiry of original period of parole, his application should have been decided before the expiry of period of parole. We may,

however, state here that this is not a ground to interfere with the impugned order. If the petitioner is sought to be penalised or is already penalised on the ground of delay in reporting jail, the petitioner can always plead delay in passing the order on the application for extension of parole as a sufficient cause for delay. All the contentions on merits in that behalf are kept open which can be urged by the petitioner in appropriate proceedings.

6 Subject to what is observed above, there is no merit in the petition and the same is rejected.

(A.S.GADKARI,J.)

(A.S.OKA,J.)