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

**CRIMINAL APPLICATION NO. 574 OF 2018
IN
CRIMINAL WRIT PETITION NO.4535 OF 2018**

Karimullah Osan Khan @ Karimullah
Hussain Habib Shaikh

....Applicant

Vs

The State of Maharashtra & Anr.

....Respondents

Ms. Farhana Shah for Applicant.

Ms. P.P. Shinde, APP for the State.

**CORAM : A.S. OKA &
A.S.GADKARI, J.J.**

DATE : 1st February 2019.

ORAL ORDER (Per Shri A.S. Oka, J.):

1] Heard the learned counsel for the Applicant and the learned
APP for the State.

2] The prayers (B) and (C) of this Application are the substantive
prayers which read thus:-

*“(B) By an appropriate direction of this Hon'ble Court the Applicant
may kindly be granted Emergency Parole Leave in order to enable him
to attend and perform the religious prayers and ceremonies on the first*

Death Anniversary of his deceased wife, Umarjahan who expired on 28th December 2017;

(C) To grant him release on Parole Leave for 14 days for the first death anniversary of his deceased wife, Umarjahan scheduled for 28th December 2018.”

3] The submission of the learned counsel for the applicant is that though the ground on which parole is sought may not be covered by the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short “the said Rules of 1959”), this Court in exercise of powers under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr. P.C”) and Article 226 of the Constitution of India can always release the prisoner on parole.

4] The submission is that even if Rules do not provide for a particular situation, this Court can exercise its inherent power and order to release a prisoner on parole. In the alternative, the learned counsel for the applicant relied upon a Government Circular dated 15th May 2000 and submitted that the applicant is entitled to benefit of Clause-3 therein. The learned counsel for the applicant relied upon a decision of the Apex Court in the case of *Pepsi Foods Ltd & Anr. Vs. Special Judicial Magistrate & Ors.*¹.

5] We have considered the submissions. Under Section 59 of the

¹ (1998) 5 SCC 749.

Prisons Act, 1894 (for short “Prisons Act”), there is a rule making power conferred on the State Government. Sub-section (5) of Section 59 confers a rule making power on the State Government to frame the rules for release of prisoners on parole or furlough. Accordingly, the said Rules of 1959 have been framed. Rule 19 sets out the contingencies in which a prisoner can be released on parole.

6] We must note here that in this case we are dealing with the power of the State Government to suspend the sentence or remit the sentence. When parole is granted, the sentence stands suspended for the period for which the parole is granted. The said power is governed by Section 432 of Cr. P.C. Now, the exercise of power under Section 432 as far as the grant of parole is concerned is governed by the said Rules of 1959. When grant of parole is a creation of the said Rules of 1959, discretionary power under Article 226 of the Constitution of India and Section 482 of Cr. P.C cannot be exercised inasmuch as passing an order granting parole on a ground which is not available under the said Rules of 1959 will virtually amount to amending the said Rules of 1959 which are framed in exercise of a statutory power. The discretionary power of this Court under Article 226 of the Constitution of India or inherent power under Section 482 of Cr. P.C

cannot be exercised contrary to the provisions of the said Rules of 1959.

7] Hence, we cannot accept the submission that by exercising the power under Section 482 of Cr. P.C or under Article 226 of the Constitution of India, this Court can order release of a prisoner on parole on a ground which is not provided in the statutory Rules for grant of power.

8] In the circumstance, the plea of the applicant cannot be accepted that though his case is not covered by the said Rules of 1959, he is entitled to parole.

9] If the applicant is entitled to parole under the aforesaid statutory Rules or under any policy of the State Government, the applicant can always make an application for grant of parole which is bound to be decided in accordance with law.

10] The Application is accordingly rejected.

11] However, it will be open for the applicant to apply for parole before the Competent Authority, as noted earlier.

(A.S.GADKARI, J.)

(A.S. OKA, J.)