

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No.2125 of 2019

* Shaikh Muktar Gafur,
Age 60 years, Occupation : Nil,
R/o Pimparkhed, Taluka Chalisgaon,
District Jalgaon.
Presently detained at Nasik Road,
Prison. .. **Petitioner.**

Versus

- 1) The State of Maharashtra
Through Secretary of Home,
Mantralaya, Mumbai - 32.
- 20 Deputy Inspector General (Prison)
Central Zone, Aurangabad.
- 3) Superintendent of Jail,
Nasik Road Prison, Nasik. .. **Respondents.**

Shri. Rupesh A. Jaiswal, Advocate, for petitioner.

Shri. R.D. Sanap, Additional Public Prosecutor, for
respondent Nos.1 to 3.

**Coram: T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

Date: 02 JANUARY 2020

ORAL JUDGMENT (Per T.V. Nalawade, J.):

1) Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2) The proceeding is filed to challenge the order made by respondent No.2 on 26-12-2019. By the impugned order, the respondents have rejected the application made by the present petitioner, prisoner for grant of emergency parole leave of 7 days. He has already availed parole for the purpose of marriage of his daughter. Copy of the order is on record and it shows that he was released on 9-6-2019 on parole for attending the marriage of his daughter and he returned to jail in time. The authority has rejected the present application as in Rule 19(2) proviso of Prisons Rules 1959 it is provided as under:

“Provided that, a prisoner shall not be released on emergency or regular parole for the period of one year after the expiry of his last emergency or regular parole except in case of death of his nearest relatives mentioned above.”

3) Learned counsel for the petitioner placed reliance on the decision given by this Court at Nagpur Seat in Criminal Writ Petition No.1046/2018 (Kantilal Jaiswal v. Divisional Commissioner, Nagpur Division

Nagpur and Others). The Full Bench of this Court considered two points which are as follows :

“(i) Whether parole is a right or a concession offered by the State or a mere administrative decision of the State dictated by its administrative policy or a special right of a prisoner in special circumstances or something else ?

“(ii) Whether proviso to Rule 19(2) introduced in terms of notification dated 16th April 2019 is violative of Article 14 and Article 21 of the Constitution of India and if yes, what treatment must it be given ?”

4) The aforesaid point No.2 needs to be considered in the present matter and this Court has held that the proviso to rule 19(2) is *ultra vires* the Constitution and such finding is given in paragraphs 41 and 42 of the decision and the finding is as under:

“41. In view of the above, it is found that the proviso to Article (sic “Rule”) 19(2) of the Rules of 1959 introduced in terms of Notification dated 16.04.2018 violates Articles 14 and 21 of the Constitution of India and thereby question (ii) is answered against the State.

42. Accordingly, the said proviso to Rule 19(2) of the Rules of 1959 introduced in terms of Notification dated 16.04.2018 is struck down as violative of Articles 14 and 21 of the Constitution of India and it is found to be ultra vires even to the objectives stated in Rule 1(A) of the Rules of 1959.”

5) The aforesaid decision rendered by this Court (Full Bench) shows that the proviso itself is struck down and so there is no bar to grant parole under Rule 19(1) for attending marriage of daughter of the prisoner. Learned counsel for the petitioner submitted that this is other daughter of the petitioner and in June 2019 marriage of the elder daughter was solemnized. Photo copy of the marriage invitation card is produced on record to show that the marriage will be solemnized on 7-1-2020. In view of the decision rendered by this Court (cited supra) this Court holds that the order made by the respondents cannot sustain in law.

6) The learned counsel for the petitioner and the Additional Public Prosecutor submitted that in Criminal Writ Petition No.2050/2019 on 18-12-2019 this Court had given direction to the respondents to see that the application filed for parole on aforesaid ground is decided within 4 days. It appears that the aforesaid case of Kantilal Jaiswal (cited supra) was not mentioned in the order. After the direction given in the previous writ petition the impugned order came to be passed on 26-12-

2019. In view of these circumstances this Court holds that the order needs to be quashed and set aside and the application itself needs to be allowed. In the result following order.

7) The petition is allowed. The order under challenge is hereby quashed and set aside. The application filed by the petitioner for parole on the ground of marriage of the daughter is hereby allowed for period of seven (7) days as per prayer made in the petition. To enable him to make arrangement for the marriage and to solemnize the marriage he is to be released on 3-1-2020 on usual terms and conditions. Rule is made absolute in those terms. Authenticated copy is allowed to both sides.

Sd/-
(M.G. SEWLIKAR, J.)

Sd/-
(T.V. NALAWADE, J.)

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