

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 6342 OF 2019

Farukh Mukhtar Shaikh ... Petitioner

V/s.

The State of Maharashtra ... Respondent

Mr. Aliabbas Delhiwala for the Petitioner.
Mr. K.V. Saste, APP for the Respondent/State.

**CORAM: B.P.DHARMADHIKARI,&
N.R.BORKAR, JJ.**

DATE : 28th JANUARY 2020

P.C.

1. Heard learned Counsel (Appointed) and learned APP.
2. Father of Petitioner expired on 16.11.2019 at place Utraula, District Balrampur, Uttar Pradesh. Prisoner submitted application for emergency parole and it was sent for obtaining police report on 19.11.2019. Senior Police Inspector, Utraula Police Station has on 23.11.2019 forwarded an email which certified death of father. However, the said police expressed possibility of prisoner absconding after his release from jail.
3. In the face of this material on record, on 24.11.2019

the Competent Authority granted him parole for 3 days on payment of escort charges. Escort charges roughly worked out to Rs.3,00,000/-.

4. Counsel for Petitioner states that father has expired at a place called Itai Rampur which is at a distance of 2000 kilometers and Petitioner would require more than 2 days to reach that place. It is submitted that leave of 3 days worked out for said purpose shows apparent non application of mind. Other contention is that when Rule 7(A) of *Maharashtra Prisons (Mumbai Furlough and Parole) Rules*, permitted 14 days leave on such occasion, restricting it only 3 days is unsustainable. Learned Counsel states that this aspect has been looked into in Judgment dated 18.02.2019 in Criminal Writ Petition Nos. 354 of 2019 and 604 of 2019 by the Division Bench of this Court. Accordingly, when period of 14 days has been specified with some object, authorities cannot bring it down to 3 days as in present matter.

5. Lastly, it is submitted that Utraula police station has only expressed a doubt or apprehension and Respondents have proceeded as if the Petitioner is bound to abscond.

He contends that suitable terms and conditions including order of sureties would have been taken and Petitioner could have been allowed parole atleast for 14 days.

6. Learned APP states that Judgment dated 18.02.2019 does not consider the case where prisoner was residing outside Maharashtra. He points out that here prisoner has been convicted even under POCSO and therefore, he is not entitled to parole or furlough. As an exceptional case, because of death in family, the leave was granted. Considering the fact that escort needed to be provided to the prisoner, parole of 3 days was worked out as prisoner could not have paid more charges. Prayer is to dismiss the petition.

7. We have perused the papers. Prisoner has not deposited fine amount of Rs.21,000/- inflicted upon him on 01.04.2019 when he has been punished. Till November 2019, he had put in only 8 months after punishment. Before that for 1 year 11 months and 13 days, he was an under trial prisoner. Thus, he had not completed even 2 years in jail. In this situation the

authorities have processed the request made.

8. Fact that Utraula police have expressed possibility of absconding is not in dispute. The jail authorities in Maharashtra, therefore, have found it fit to provide escort and considering the charges to be paid, have worked out the period to minimum 3 days.

9. It is true that Rule 7(A) stipulates leave of 14 days on account of death in family. The Respondent Authorities could not sanction leave for 14 days because of constraints noted supra. However, they could have insisted upon the production of or supply of local sureties and also other similar conditions so as to see that he returns back to the prison within time. His relative at Itai Rampur also could have been called upon to furnish necessary bond and undertaking.

10. Pointing out that while issuing notice in the matter on 14.01.2020, this Court has taken note of fact that 40 days period has also expired after death. Learned Counsel (Appointed) submits that in religion of Petitioner some

ceremonies may still not have taken place.

11. Though we do not see anything wrong with the order, we feel that authorities could have obtained proper undertaking and independent sureties instead of ordering escort.

12. If the needs still survives, it is open to the Petitioner to apply to the authorities afresh. In that event, authority shall within two weeks consider it suitably and pass fresh orders.

13. With this order, we disposed of petition. Order be communicated to the petitioner in jail.

(N.R.BORKAR,J.)

(B.P.DHARMADHIKARI, J.)