

CRIMINAL WRIT PETITION NO.2534 OF 2021

Vs.

State of Maharashtra & others ... Respondents

Ms.A.S. Pai, Public Prosecutor, for Respondent – State

**CORAM: S.S. SHINDE &
N.J. JAMADAR, JJ.**

JUDGEMENT RESERVED ON: SEPTEMBER 13, 2021
JUDGEMENT DELIVERED ON: SETPEMBER 17, 2021

JUDGMENT (PER S.S. SHINDE, J.):

1. Rule. Rule made returnable forthwith with the consent of the learned Counsel appearing for the parties and heard finally.
2. The brief facts of the case are that the petitioner's brother, namely, Maruti @ Pintu Dattatray Harihar is a life convict, who was arrested in relation to C.R. No.99 of 2000 for the offences punishable under sections 396, 364, 414, 201 read section 34 of the Indian Penal Code registered with Pandharpur Taluka Police

Station, Pandharpur, District Solapur. The petitioner's brother (for short, hereinafter referred to as 'the convict') had applied for parole leave on 2nd March, 2020, which was rejected on 14th July, 2020 by the Divisional Commissioner, Pune Division, Pune. Hence, this petition.

3. Learned Counsel appearing for the petitioner submitted that the convict was released on parole/furlough in the past and he had returned to jail in time on two occasions although there was some delay on other occasions. She has, however, submitted that for such delay in reporting to the jail, appropriate action of deduction of remission was taken against the convict. It is submitted that the convict has already spent 22 years in prison. It is also submitted that the mother of the convict is required to undergo a surgery and the presence of the convict is necessary for taking care of her. The learned Counsel submitted that grounds of rejection on the basis of Rules 4(2) and 4(13) of the Maharashtra Prisons (Mumbai Parole & Furlough) (Amendment) Rules, 2018 cannot be applicable to the convict as he has already completed 22 years of imprisonment. It is also submitted that the Karmala police report specifies that if the convict is released on parole

leave, they have no objection as they have verified the entire medical record of the mother of the convict. The learned Counsel has, therefore, prayed that the petition be allowed and the convict be granted parole.

4. Learned APP appearing for the Respondent – State has opposed the petition for parole leave. She submitted that there may be other relatives to look after the mother of the convict. She submitted that when the convict was released in the year 2010 on furlough, he did not report back to the prison authorities on completion of the said furlough in time as he had overstayed for 6 days. Similarly, when the convict was released on parole in February, 2012, he surrendered to the jail after a delay of 266 days and hence, an offence was registered under section 224 of the Indian Penal Code against the convict. Again, in May, 2016, when he was released on parole, he reported late by 169 days and at that time also, an offence was registered under section 224 of the Indian Penal Code against the convict. The learned APP has, therefore, submitted that the convict is in the habit of overstaying as and when he is released on furlough/parole. He is a convict under section 396 of the Indian Penal Code and, therefore, he is

not entitled to be released in view of the amended rules 4(2) and 4(13) of the Prison Rules. She has prayed that the petition be dismissed.

5. We have given careful consideration to the rival submissions. With the assistance of the learned Counsel appearing for the petitioner and the learned Public Prosecutor appearing for the Respondent – State, we have perused the grounds taken in the petition, the annexures thereto and the grounds on which parole leave is applied for by the convict. Admittedly, the petitioner has undergone 19 years, 8 months and 7 days of imprisonment. It is true that on each occasion, when the convict was released, he overstayed the sanctioned leave period. However, the fact remains that he voluntarily surrendered to the jail authorities. There is no denial to the assertion of the learned Counsel appearing for the petitioner that the police report is in favour of the convict. It is needless to mention that if the petitioner has overstayed, the respondent – authorities might have taken appropriate action against him including deduction of remission as available to the credit of the convict. In addition to the above, the learned Counsel for the petitioner has assured this Court that if the

petitioner is released on parole, he will not jump the said leave and the convict will report back to the jail authorities on completion of the period of parole leave.

6. Keeping in view the sentence undergone by the convict till today and the fact that the petitioner was released on couple of occasions on parole/furlough and he surrendered to the jail authorities on his own, we are inclined to allow this petition.

7. Accordingly, the petition is allowed in terms of prayer clauses (a) and (b). The petitioner is directed to be released on regular parole for the period mentioned in the relevant Rules upon furnishing the necessary sureties and bond as prescribed under the Rules.

8. It is made clear that any breach of the conditions of parole will be seriously viewed. The petitioner shall report back to the respondent jail authority immediately upon completion of the parole period.

9. Writ Petition stands disposed off accordingly.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)