

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.219 OF 2020

Omprakash Bharat Bhatkar,
 C-4587, Central Prison,
 Amravati.

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Petitioner
 (In Jail)

.. Versus ..

1. The Divisional Commissioner,
 Amravati Division, Amravati.

2. The Superintendent,
 Central Prison,
 Amravati.

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Respondents

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Shri Tarun Parmar, Advocate (Appointed) for the petitioner,
 Shri M.J. Khan, APP for the respondents-State.

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**CORAM : PRASANNA B. VARALE AND
 N.B. SURYAWANSHI, JJ.**

DATED : 30.03.2021.

JUDGMENT (PER : N.B. Suryawanshi, J.)

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the learned counsel for the parties.

2. The petitioner was convicted by the learned Sessions Court, Amravati for offences punishable under Sections 3 (1)(ii), 3 (2), 3 (4) of the Maharashtra Control of Organised Crime Act, 1999 (for short 'MCOCA Act') and under Sections 397, 120 (B) of the Indian Penal Code, 1860 and was sentenced to suffer imprisonment. The petitioner being prisoner no.C-4587 is presently undergoing sentence of imprisonment at Amravati Central Prison. On 09.10.2019, the petitioner applied for parole leave of 30 days for the treatment of his mother. Vide order dated 27.12.2019, his application was rejected by the respondent no.1. Being aggrieved by the rejection of his application for parole leave, he has filed the present petition.

3. The learned Advocate for the petitioner vehemently submitted that there is total non application of mind on the part of the first respondent in rejecting the prayer of the petitioner, merely because the brother and father of the petitioner are there. This cannot be a ground to reject parole leave application of the petitioner. On the point of belated surrender on previous occasions, the learned Advocate placed reliance on the orders passed by this Court in Criminal Writ Petition Nos.289/2018,

919/2016 and 967/2017 and submitted that on that ground his request cannot be rejected.

4. The learned APP, on the other hand, submitted that there is amendment to the Rules, vide Notification dated 16.4.2018. By pointing out Rules 4 (10), (13) and 19 (2), the learned APP submitted that the petitioner is not entitled for parole leave, in view of these amended rules.

5. Perusal of the order impugned in the present petition shows that police verification report was called from the Superintendent of Police, Akola. He submitted the report stating that in the family of the petitioner, his younger brother and father are there to look after the petitioner's ailing mother. The name of the petitioner is not recommended for parole in the nomination chart. The petitioner was earlier released on furlough leave, but he did not surrender on due date. He was absconding, therefore, Crime No.3035/2016 under Section 224 of the Indian Penal Code was registered against him. If the petitioner is released, he may again abscond and there is possibility of breach of peace by the petitioner. The first

respondent therefore considering the said report and taking into consideration the fact that earlier when the petitioner was released on furlough leave, he had absconded and surrendered belatedly after 389 days and considering the fact that Akola was extremely sensitive area and there was possibility of breach of peace by the petitioner, rejected his parole leave.

6. We have considered the provisions of amended rules.

Rules 4 (10), (13) and 19 (2) reads thus :

“4. Eligibility for furlough – All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough :

(10) Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough;

(13) Who is sentenced for offences such as terrorist crimes, mutiny against state, kidnapping for ransom (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section)

“19. When a prisoner may be released on emergency parole :-

(1)

(2) Regular Parole – All the prisoners eligible for furlough shall be eligible for regular parole for following reasons :-

- a. Serious illness of father/mother/spouse/son/daughter.*
- b. Delivery of wife (except high security risk prisoners)*
- c. In case of natural calamities such as house collapse, flood, fire earthquake, etc.*

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.

7. In terms of the rules quoted hereinabove, since the petitioner had earlier committed default in surrendering on due date, after he was released on parole, he is not entitled for parole in terms of Rule 4 (10). In view of Rule 19 (2) proviso, the petitioner is not entitled to be released on emergency or regular parole for a period of one year after the expiry of his last emergency or regular parole, except in case of death of his nearest relatives mentioned in Rule 19 (2) (a). The petitioner is convicted under the MCOC Act. Therefore, in terms of Rule 4

(13) also the petitioner is not entitled for release on parole leave.

8. Perusal of the order impugned in the present petition shows that the first respondent has recorded adequate reasons and has passed a reasoned order. We do not find any fault with the order passed by the first respondent which is impugned in the present petition. There is no merit in the petition, the petition is therefore dismissed.

9. The counsel for the petitioner is appointed to represent the petitioner through legal service authority. As such, fees of the learned Counsel is quantified at the rate of Rs.2,000/-. Rule discharged.

(N.B. Suryawanshi, J.)

(Prasanna B. Varale, J.)