

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETN. NO. 258 OF 2021

PETITIONER :- Arun S/o Gulab Gawli, C-8535, Aged about 64 years, R/o. Gitai Society, Dagdi Chowl, Baburao Jagtap Marg, Byculla (W), Mumbai : 11.
Presently Nagpur Central Prison, Nagpur.

...VERSUS...

RESPONDENTS :- 1. Divisional Commissioner, Nagpur Division, Nagpur.
2. The Superintendent Central Prison, Nagpur.

Mr. Mir Nagman Ali, Advocate for the petitioner.
Mr. S. P. Deshpande, A.P. P. for the respondents.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.

DATED : 08.04.2021.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.
2. **Rule.** Rule made returnable forthwith.
3. The present Criminal Writ Petition is directed against the order dated 03/03/2021 passed by the respondent No.1, whereby the

application of the petitioner for grant of parole leave came to be rejected on the basis of adverse Police Report, in view of Rule 4(4) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (hereinafter referred to as "Rules of 1959"). The petitioner is convicted for the offences punishable under sections 302, 120(B) of the Indian Penal read with sections 3(1)(i), 3(i)(ii), 3(2) and 3(4) of the Maharashtra Control of Organized Crime Act is undergoing imprisonment for life. The petitioner is undergoing sentence in Nagpur Central Jail.

4. The petitioner, on 26/12/2020, filed an application with the respondent No.2 seeking parole leave of 45 days to perform surgery of her wife, who is suffering from Chronic Suppurative Otitis Media (CSOM) to left ear. The respondent No.2 called for report from the Assistant Police Commissioner, Agripada Division, Mumbai by communication dated 18/01/2021. The Assistant Police Commissioner sent a report accepting the fact that the wife of the petitioner suffers from illness as mentioned in the application and Jaslok Hospital, Mumbai has issued an advise to his wife to undergo surgery. It is stated in the report that the son and other relatives of the wife of the petitioner are capable of taking care of her. It is also stated that when the petitioner was granted leave earlier from 17/04/2018 till 25/04/2018, an offence bearing Crime No.165 of 2018 was registered

against the wife of the petitioner. It is stated that since the petitioner is a leader of syndicate and involved in number of criminal activities, the Police Report was adverse. The respondent No.1, therefore, by order dated 03/03/2021, rejected parole leave application of the petitioner.

5. The petitioner has therefore, filed present petition challenging order dated 03/03/2021. This Court, on 18/03/2021 issued notice to the respondents. The respondent No.1 in pursuance of notice of this Court filed a reply stating that in view of adverse Police Report and the petitioner being involved in number of criminal activities, his parole application is rightly rejected. The respondent No.2 has filed reply stating that during parole leave granted to the petitioner from 17/04/2018 to 25/04/2018, an offence was registered against the wife of the petitioner. It is stated that if the petitioner is released on parole leave, there is danger to the complainants and witnesses. The respondent No.2 in paragraph-7 has indicated charts of furlough and parole leave granted to the petitioner on earlier occasions, which is as under:-

Furlough Chart

Sr. No.	Particulars	Date of Release	Date of Surrendered	Remarks
01	Furlough Leave	13.04.2016 for 28 days	Surrendered on due date.	Surrender himself i.e. on 12.05.2016
02	Furlough Leave (As per	04.05.2017	Surrendered	Surrender himself

	order by Hon'ble High Court)	for 28 days	on due date	i.e. on 02.06.2017.
03	Furlough Leave (As per order by Hon'ble High Court)	08.05.2019 for 28 days	Surrender on due date	Surrender himself i.e. on 06.06.2019.
04	Furlough Leave (As per order by Hon'ble High Court)	28.07.2020 for 28 days	Surrender on due date	Surrender himself i.e. on 26.08.2020.

Parole Chart

Sr. No.	Particulars	Date of Release	Date of Surrendered	Remarks
01	Parole Leave (As per order by Hon'ble High Court)	05.05.2015 for 15 days and extended 21 days	Surrendered on due date.	Surrender himself i.e. on 12.06.2015
02	Parole Leave (As per order by Hon'ble High Court)	21.10.2016 for 13 days	Surrendered on due date	Surrender himself i.e. on 02.11.2016.
03	Parole Leave (Emergency Parole leave)	17.04.2018 for 07 days	Surrender on due date	Surrender himself i.e. on 25.04.2018.
04	Parole Leave (As per order by Hon'ble High Court)	30.04.2018 for 45 days and extended 15 days	Surrender on due date	Surrender himself i.e. on 30.06.2018.
05	Parole Leave (As per order by Hon'ble High Court)	12.03.2020 for 45 days and extended 38 days	Surrender on due date	Surrender himself i.e. on 03.06.2020.

6. We have carefully considered the impugned order passed by the respondent No.1. At this stage, it would be necessary to consider Rule 19 of Rules of 1959. Rule 19 of Rules of 1959 contemplates that the prisoner will be releases on parole for such period as the Competent Authority in its discretion may order in case of serious illness or death

of any member of prisoner's family or a nearest relatives or a pregnant woman prisoner for delivery or for any other sufficient cause. Rule 22 of Rules of 1959 deals with procedure to be required by Authority after receipt of application. Sub-rule (2) of Rule 22 makes it obligatory on the part of the District Superintendent of Police or the Commissioner of Police as the case may be to make enquiries and ascertain whether the ground on which parole is applied is genuine and are required to submit the report in this regard to the Competent Authority immediately mentioning therein whether they recommend grant of parole or not.

7. The first reason for rejection of parole leave is the offence allegedly committed by wife of the petitioner is Crime No.165 of 2018 under sections 143, 147, 149, 427, 506, 385, 386, 387 of the Indian Penal Code during parole leave granted to the petitioner from 17/04/2018 to 25/04/2018. This Court while releasing the petitioner on parole by judgment and order dated 26/02/2020 in *Criminal Writ Petition No.89 of 2020* had considered the said factor and granted parole leave to the petitioner. This Court, while releasing the petitioner on parole leave by order dated 26/02/2020 had also considered the apprehension expressed in the impugned order that the petitioner is leader of gang.

8. The third reason for rejection of parole leave of the petitioner is that the son and daughter of the petitioner can take care of the wife of the petitioner in case of surgery. This court by order dated 26/02/2020 had released petitioner on parole leave on the ground of illness of his wife. This Court while granting parole leave to the petitioner in order dated 26/02/2021 had observed that no person in the family can extend a support or help to ailing wife as her husband would and in such a case, the husband himself would like to see his wife or otherwise his anxiety will affect his well being adversely. Perusal of certificate issued by Jaslok Hospital dated 15/03/2021 reflects that the date of surgery is postponed to 15/04/2021. The report of enquiry prepared by the Assistant Police Commissioner, Agripada Division, Mumbai does not dispute the fact of necessity of surgery of wife of the petitioner and genuineness of certificate dated 15/03/2021. Taking into consideration the nature of serious illness i.e. Chronic Suppurative Otitis Media (CSOM) to left ear, we are satisfied that the petitioner deserves to be released on parole.

9. A bare perusal of the charts referred above show that on each occasion whenever the petitioner was released on either furlough or parole leave, the petitioner had surrendered himself on due date before the Prison Authorities. The respondents have not pointed out

that the petitioner had made any act to endanger life of any person, nor is it pointed out that the petitioner has misused the parole or furlough leave granted to him.

10. In the result, we pass following order.
 - i. The impugned order dated 03/03/2021 passed by the respondent No.1 rejecting parole application No.6 of 2021 of the petitioner is quashed and set aside.
 - ii. The respondent No.1 is directed to grant parole leave to the petitioner as per his entitlement, eligibility and upon such conditions as may be permissible to be imposed upon the petitioner in terms of the Prisons (Bombay Furlough and Parole) Rules, 1959 within a period of one week from the date of receipt of this order.
11. Rule is made absolute accordingly.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)

Ghanshyam
Khunte

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