

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

CRIMINAL WRIT PETITION NO.480 OF 2020

Rahul Ashok Shardul,
C-5566, Aged Major,
Occupation-Nil,
(Presently in Central Prison,
Amravati).

...

Petitioner

.. Versus ..

1. State of Maharashtra,
Through S.P. Central Jail,
Amravati.
2. Divisional Commissioner,
Amravati Division, Amravati.

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Respondents

.....
Shri Raju Kadu, Advocate for the petitioner,
Shri A.R. Chutke, APP for the respondents.

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

DATED : 30.03.2021.

JUDGMENT (PER : PRASANNA B. VARALE, J.)

1. Heard the learned counsel for the petitioner and the
learned APP for the respondents-State.

2. As the issue involved in the petition is a short issue i.e. order of rejection passed by the respondent-authority on an application submitted by the petitioner-convict seeking parole leave, the petition is taken up for hearing and with the consent of the learned counsel appearing for the respective parties.

3. Rule. Rule made returnable forthwith. Few facts giving rise to the petition can be summarized as under :

The petitioner is presently lodged in Central Prison, Amravati as Convict No.C-5566 suffering a sentence awarded by the learned Sessions Judge, Mumbai for commission of offence punishable under Sections 302 and 148 of the Indian Penal Code. On account of a serious illness suffered by the mother of the petitioner, he submitted an application for grant of parole leave to the competent authority. According to the procedural formalities, a report was called for. The respondent no.2 - Divisional Commissioner, by order dated 4.8.2020, rejected the application assigning the reason reflected in paragraph 3 of the order. An apprehension is expressed that in case the petitioner is released, he may not surrender to the prison on completion

of the parole leave or he may indulge in an act of a serious offence and there is a threat of life to the complainant and the witnesses.

4. Learned counsel Shri Kadu appearing for the petitioner vehemently submitted that the rejection order is nothing but an outcome of non-application of mind of the Authorities. The learned counsel for the petitioner, by inviting our attention to the order, firstly submitted that the Authorities have accepted that the mother of the petitioner is suffering from serious ailment, but without there being any basis, an adverse opinion is formed by the authority that the petitioner if released may indulge himself in some serious offence. Learned counsel Shri Kadu then invited our attention to the copies of the judgments placed on record in support of his submissions. Learned counsel Shri Kadu also invited our attention to the Circular issued on behalf of the Home Department, dated 6.8.2010 to submit that though on one hand the State Government instructs its Authorities not to reject the application seeking parole or furlough leave on the ground of illness of the close relatives mechanically, in reality the competent authorities are routinely

rejecting these applications without applying their mind. Learned counsel Shri Kadu submitted that in the Govt. Circular dated 6.8.2010, a reference is made to the order of the Division Bench at Nagpur in Criminal Writ Petition No.73/2010 (Randhir Mangruji Thote .vs. State of Maharashtra and others) and it is observed by the Division Bench that it will not be appropriate to reject the applications only on the ground that the petitioner failed to submit the medical reports. The circular dated 6.8.2010 states that even if the convict fails to submit the necessary medical reports or certificates, the competent authority can take a decision on the application by calling upon the Police Station Officer of the concerned Police Station within which jurisdiction the convict resides to submit the necessary information in respect of the ailment and then by obtaining such necessary information, the authority can decide the application. Thus, the learned counsel submitted that in the present case the mother of the petitioner is suffering from serious ailment i.e. cancer is not at all disputed. There are supporting certificates that the mother of the petitioner was under treatment of Tata Memorial Trust at Mumbai, but then by assigning some imaginary reasons, the application is rejected.

5. The learned APP, though made an attempt to support the order impugned in the petition, considering the material placed on record, we are of the opinion that the learned counsel for the petitioner has made out a case for allowing the petition, even though in the rejection order, the competent authority admits the factum of serious ailment suffered by the mother of the petitioner and then rejects the application only on assumptions and presumptions. It is also interesting to note that the nephew of the petitioner, who expressed his desire to stand as surety for the petitioner, is also looked by the authority with a suspicion. Now again there is no material coming-forth on the record as to why that suspicion arose in the mind of the authority in respect of the said surety. Again it is interesting to note that it was the first occasion for the petitioner to seek a leave for his release and in spite of that, the authority formed an opinion that in case the petitioner is released or granted leave, he may indulge in an act of threatening or pressurizing the complainant or the witnesses. Needless to state that now the petitioner is suffering a sentence after a full-fledged trial. The learned counsel for the petitioner was justified in making a

submission that the authority ought to have been acted by giving a proper and due consideration to the Govt. Circular dated 6.8.2010, but there is a total non consideration of the said Govt. Circular. The so called report forwarded by the Superintendent of Police, Thane (Rural) in which the Police Authority also makes interesting reading in this report, it is stated more than once that prior to this application, the petitioner had not availed the facility of parole or furlough leave and it was his first application. It is also submitted in the report that the necessary documents in respect of ailment of the mother of the petitioner were placed on record. It is also admitted that the proposed surety one Kiran Siddharth Kale was ready to stand as surety for the petitioner and gave necessary undertaking on a stamp paper. His statement was also recorded. When all this material was available with the Police Authority, which was a positive material in support of the application, here the Police Station Authority Thane (Rural), for the reasons best known to him, formed a negative opinion. This is also an indication of non application of mind by the Authority.

6. Considering all these aspects, we are of the opinion

that the order dated 4.8.2020 impugned in the petition is clearly unsustainable and requires to be quashed and set aside. Accordingly, we quash and set aside the order dated 4.8.2020 and direct the respondent no.2 i.e. the Competent Authority to release the petitioner on parole leave on usual terms and conditions, as prescribed under the Rules.

7. The criminal writ petition is allowed accordingly. Rule is made absolute in the aforesaid terms.

(N.B. Suryawanshi, J.)

(Prasanna B. Varale, J.)