

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.574 OF 2021

Pravin S/o. Pundalik Rathod,
Aged about years,
R/o. Bhandegaon, Taluka – Darhva,
Dist. - Yavatmal.
(Presently C/4804, Central Prison,
Amravati, District Amravati).

....PETITIONER

---- VERSUS ----

Superintendent of Jail,
Central Prison, Amravati,
District Amravati.

.... RESPONDENT

Ms. P. M. Mane, Advocate h/f. Shri S. D. Chande, Advocate for the
Petitioner.

Shri S. M. Ghodeswar, A.P P for the Respondent/State.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 25.08.2021.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard.
2. Rule. Rule made returnable forthwith.
3. By this writ petition under Article 226 and 227 of the
Constitution of India, the petitioner is challenging order dated
01.06.2021 passed by the respondent imposing condition of
payment of escort charges while granting parole leave for a period
of 14 days.

4. The petitioner is a convict for the offence punishable under Sections 376(2)(g) of the Indian Penal Code, and is undergoing imprisonment for 10 years.

5. The petitioner on 07.05.2021 filed an application with the respondent stating that due to death of his father, it is necessary for him to attend last rites of his father on the said date and, therefore, prayed for emergency parole of 14 days as contemplated by Rule 19(1)(B) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (hereinafter refers as "The Rules of 1959"). The respondent therefore, called for report from Senior Police Inspector, Police Station, Darwha, District Yavatmal, who submitted report stating that father of the petitioner had expired on 06.05.2021 and on previous occasions when the petitioner was released on leave, the petitioner has surrendered on due date.

6. The respondent by impugned order allowed the emergency parole leave of the petitioner subject to payment of escort charges of 3 days. The petitioner has therefore, challenged the condition of payment of escort charges on the ground that the said condition is unreasonable.

7. This Court by order dated 11.08.2021 issued notice to the respondent. The respondent has filed reply stating that the

request of the petitioner has been considered subject to payment of escort charges and since he has not paid the said charges, he could not be released by the respondent.

8. We have carefully considered the impugned order. Rule 19(1)(B) of the Rules of 1959 confers discretion on Superintendent of Prison to decide whether to grant parole under police escort or with a condition to report daily to the local police station, depending upon the nature of crime committed by the prisoner and his conduct during his stay in the prison. Having gone through the impugned order, it appears that the respondent - Authority has not applied it's mind to the condition of exercise of discretion imposed under Clause B of Rule 19(1) of the said Rules. It was necessary for the respondent to give reasons as to why the respondent is directing the petitioner to grant parole under police escort and not a condition to report daily to the local police. Under the said Rules, it was necessary to exercise jurisdiction after taking into considerations nature of the crime committed by a prisoner and his conduct during his stay. On consideration of the averments in the petition, and in particular paragraph No.13 of the petition wherein that the petitioner had always surrendered in time whenever he was released on leave and taking into consideration nature of the offence committed by the petitioner, we are of the opinion that the

respondent ought to have exercised discretion under Rule 19(1)(B) of the Rules of 1959 by imposing condition of reporting daily to local Police Station.

9. The learned Additional Public Prosecutor has placed on record letter dated 07.06.2021, which quantifies amount of escort charges at Rs.2,69,352/-. It is stated in paragraph No.11 of the petition that it is difficult for the petitioner to pay the escort charges as the petitioner is very poor and labour class. On consideration of Rule 19(1)(B) of the Rules of 1959, we are satisfied that the respondent was required to exercise discretion depending upon the nature of the offence committed by the petitioner and his conduct during his stay.

10. In view of above, we pass following order :

i. The petition is allowed.

ii. The respondent shall release the petitioner on emergency parole of 14 days for performing last rites of his father subject to condition that he shall report to Police Station, Darwha once in every 24 hours and subject to other conditions as permissible under the provisions of the Rules of 1959.

11. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE

RGurnule