

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 1166 OF 2022

Santosh Rajaram Wankhede

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

.....

Mr. Aniket Vagal a/w. Mr. Kunal Pednekar for the Petitioner.
Mr. J.P. Yagnik, APP for the Respondent – State.

.....

**CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.**

DATE : 21ST APRIL, 2022

P.C.:

1. Heard learned counsel appearing for the petitioner and learned APP.
2. The petitioner – convict No. 10128, who is presently lodged at Nashik Road Central Prison, Nashik, by way of present petition challenges the order dated 2nd February, 2019 passed by respondent No.2 – Addl. Director General of Police and Inspector General of Police, Prison and Reformation, Pune.
3. Perusal of the order dated 2nd February, 2019 shows the following reasons were assigned for rejection of application of the petitioner :

- (1) The petitioner is not entitled for furlough leave as per Rule 17 of Chapter-37 of the Maharashtra Prisons Manual (1979).
- (2) Negative report forwarded by Assistant Commissioner of Police, Manmad.
- (3) Offence committed by petitioner is serious in nature.
- (4) The petitioner was granted furlough leave in the year 2016 and the petitioner returned back to prison authority belatedly after 473 days.
- (5) There is no positive recommendation by Superintendent of Police.

4. Mr. Vagal, learned counsel for the petitioner, vehemently submitted that the grounds for rejection assigned in the order only show mechanical approach of the authority. It is submitted by learned counsel that the first ground is in the nature of misleading the Rules and preventing the petitioner permanently from prayer of parole leave, which is not object of the Rules. It is also submitted by learned counsel that the second reason assigned is a negative report. Similarly, third ground is only reiteration of negative opinion expressed in the report dated 6th August, 2018. Fourth ground is of belated surrender .

5. Learned counsel submitted that for such belated surrender, the petitioner was subjected to punishment of removal of his name from remission book and insofar as fifth

ground is concerned, it is also a mechanical approach of the authority. He submitted that the petitioner was awarded life imprisonment by judgment and order dated 20th August, 2015 passed by learned Additional Sessions Judge, Niphad. Against the said judgment and order, the petitioner preferred Criminal Appeal No. 1041 of 2015. The Division Bench of this Court by judgment and order dated 23rd December, 2021 was pleased to observe that case of the petitioner falls under Exception-4 to Section 300 of the Indian Penal Code. In view of facts of the case and conviction awarded to the petitioner under Section 302 of the Indian Penal Code, the petitioner was convicted under Section 304 Part II of the Indian Penal Code. There was consequent modification in the sentence of life imprisonment and the sentence was reduced to rigorous imprisonment of 10 years along with fine.

6. Learned counsel further submitted that the petitioner is in jail for nearly nine years. He then invited our attention to the grounds raised in the petition. The petitioner claims release on the ground of ailment of his mother, who is 90 years old. It is submitted by learned counsel that after rejection of the appeal by order dated 2nd February, 2019, the petitioner had filed

another application for grant of parole leave and this application was also rejected.

7. By considering the above referred facts, we find some merit in the submission of learned counsel for the petitioner.

8. The appellate authority rejected the application of petitioner vide order dated 2nd February, 2019. It seems that all the facts were not before the appellate authority. The appellate authority had, prior to the decision of Division Bench of this Court in Criminal Appeal No. 1041 of 2015, arrived at a conclusion that as the offence committed by petitioner is a serious one and as in the year 2016, petitioner was released and returned to the prison authority belatedly, rejected the appeal. The subsequent event, namely, the decision of Division Bench of this Court changes the scenario. The Division Bench was pleased to observe that the conviction recorded by the learned Additional Sessions Judge for commission of offence under Sections 302 of the Indian Penal Code is not sustainable and case of the petitioner falls under Exception-4 to Section 300 of the Indian Penal Code.

9. It is also not in dispute that after 2016, the petitioner was neither released on parole leave nor furlough leave even on a

single occasion. It is also not in dispute that the petitioner can avail emergency parole leave on account of illness of his mother, who is 90 years old, as observed by us above. The petitioner has placed on record a Certificate issued by the Superintendent, Nashik Road Central Prison, Nashik dated 10th March, 2022 and it is stated in the Certificate that the petitioner is working in the kitchen of prison and he is regularly attending his kitchen duties, and his conduct in prison is satisfactory.

10. Considering all these aspects, we are of the opinion that the petitioner has made out a case. Resultantly, we pass the following order :

ORDER

- (1) The petition is partly allowed.
- (2) The order impugned in the petition dated 2nd February, 2019 passed by respondent No.3 - Addl. Director General of Police and Inspector General of Police Prison and Reformation, Pune is quashed and set aside.
- (3) The petitioner to submit a fresh medical certificate of his mother within one week from today.
- (4) On receipt of said medical certificate by the prison authority, the prison authority is directed to pass an

appropriate order for grant of emergency parole to the petitioner as per Rules, as early as possible and not later than two weeks from the date of receipt of the medical certificate.

11. Needless to state that the prison authority not to reject the prayer raising the same ground submitted by petitioner or relatives of the petitioner.

12. Parties to act upon an authenticated copy of this order.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)

**TRUPTI
SADANAND
BAMNE**

Digitally signed by
TRUPTI SADANAND
BAMNE

Date: 2022.04.25
18:27:43 +0530