

challenged this order by way of this writ petition. In the prayer clause, the Petitioner has sought a modification of the order dated 29 July 2022 and has prayed that he may be released on emergency parole for a period of 14 days without escort.

3. In paragraph 4 of the petition, the Petitioner has made the following specific statement :

“4. The Petitioner says and submits that on 10.07.2022, the brother of the Petitioner died at Mumbai. The Petitioner on 12.07.2022 made Application for Emergency Parole to attend the 40th day ritual which is Scheduled on 21.08.2022”.

4. We called upon the Petitioner to show the application made on 12 July 2022 when the petition came up for hearing on 12 August 2022. None of the applications have been annexed and the application was shown to us is same as what is averred in the petition that a request is made to attend the 40th day ritual and the date is given as 21 August 2022. This is repeated in two more applications, which is shown to us by the learned APP, thereupon we passed the following order on 12 August 2022.

“ By this Petition, the Petitioner is seeking modification of the order dated 29 July 2022 where, upon the payment of escort charges, the Petitioner has been permitted to attend 40th day ceremony on account of death of his brother as

scheduled on 21 August 2022. The learned Counsel for the Petitioner sought to contend that the Petitioner had also asked for 14 days parole however, in the application which is shown to us this is not the prayer. The prayer is only to attend the ceremony of 21 August 2022. The learned Counsel for the Petitioner sought to contend, relying on the decision of this Court in the case of Mohammad Mushtaq Moosa Tarani V/s. The State of Maharashtra and Ors. (Writ Petition No. 133 of 2022) dated 9 February 2022, that this Court has power to dispense with the payment for police escort.

2. The learned APP points out that the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 have been amended by a Notification dated 10 February 2022, where in Rule 19(C)(ii) three provisos is incorporated empowering the concerned authorities therein to reduce the escort charges or completely waive the same by giving a reasoned order.

3. The Petitioner's case has not been considered under the above provisos. Once this contingency has been provided under the Rules by way of an amendment, it is not necessary for us to entertain this request directly as it is not yet been ruled upon by the concerned authority. However, considering the time limit that is available to the Petitioner, we do not intend to dispose of the matter but keep the same pending.

4. Stand over to 18 August 2022.

5. In the meanwhile, the concerned authorities specified in the above mentioned Rule will treat the Petition as a representation or reference made under the amended Rule and take decision thereupon and place the same on the file of this Petition.

6. Office of the Public Prosecutor will communicate the order and also all parties will act on authenticated copy.

5. By the above order, we had directed the Respondent-State to consider the application of the Petitioner in respect of attending the 40th day ceremony in light of the amendment to the Rules of 1959 brought about on 10 February 2022. We had directed the authorities to take up the matter on priority basis.

6. The learned APP states that this application has been considered by Respondent No.2 -Superintendent, Yerwada Central Prison and the order dated 17 August 2022 placed before us wherein the authorities have noted that considering totality of the circumstances treating it as exceptional circumstances, the escort charges have been waived.

7. But the learned Counsel for the Petitioner submitted that the Petitioner is not satisfied with this order as the Petitioner seeks parole for 14 days without escort charges.

8. If the Petitioner wanted 14 days parole like any other Petitioner, it should have been specifically stated so instead the Petitioner has specified the date on which he wants to attend. Even in the petition, the averment is to attend the 40th day ritual, is now come in the oral arguments. We agree with the learned APP that the application made by the Petitioner reads that it is for one day and in that context it was processed. Considering that it was for one day, the authorities have exercising their power granted exemption from charges. The grant of 14 days parole without escort charges was never under contemplation of the authorities having not specifically asked so. The application does not give any period of 14 days, as to whether it would start on 40th day, end on that date or in between. The scope of application orally is being expanded.

9. We had asked the learned Counsel for the Petitioner that the Petitioner even now can make an application for further period of which expeditious consideration could have been ordered but learned Counsel for the Petitioner relying on the decisions of this Court in the cases of *Firoz @ Akram Aamani Malik Versus State of Maharashtra & Others*¹ and *Essa @ Anjum S/o. Abdul Razzaq Memon Versus The State of Maharashtra & others*² contends that it is not necessary to make

¹ Criminal Writ Petition No. 4979 of 2018, dated 2 November 2018

² Criminal Writ Petition No. 190 of 2021, dated 28 January 2021

any separate application as it is the right of the Petitioner to be granted on parole for 14 days and that is the application already made.

10. As regards seeking this relief directly in this writ petition without making it before the authorities is concerned, the learned APP has pointed out that the parole is not as a matter of right. In these background and circumstances, we do not find any fault in the stand taken by Respondent No.2 - Superintendent, Yerwada Central Prison permit the Petitioner parole leave to attend ceremony for one day. It is upto the Petitioner whether to accept this order passed now on 18 August 2022 to attend ceremony without escort charges. As regards the prayer for 14 days without escort charges is concerned, we are not inclined to grant in the facts and circumstances of the case, when this was not the application before the authorities.

11. Writ petition is accordingly rejected.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)

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