

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

CRIMINAL WRIT PETITION NO. 90/2022

(GAJANAN BABULAL BATTULWAR (C/9971)(INJAIL) **VERSUS** STATE OF MAHARASHTRA & ANOTHER)

*Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders.*

Court's or Judge's order

Shri R.L. Kadu, counsel for the petitioner.
 Mrs.Nandita Tiwari with Ms H.N. Jaipurkar, A.P.P for the respondents.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

DATE : FEBRUARY 11, 2022.

The petitioner seeks his release on emergency parole for the marriage of his niece. The application for such emergency release has been rejected by the Senior Prison Officer on 13.01.2022 giving the reason that such release is not permissible under Rule 19(1) of the Prisons (Bombay Furlough and Parole), Rules 1959.

The learned counsel for the petitioner submits by referring to the averments in paragraph 3 of the writ petition that the marriage of his nephew (sic. niece) is fixed on 14.02.2022 and there is no Karta in the family as the father of the said niece expired on 29.08.2019. Alongwith the writ petition the marriage invitation card has been annexed.

Rule 19(1)(A) of the said Rules reads as under:

“19. When a prisoner may be released on emergency parole:-

(1) Emergency Parole. --

(A) All convicted prisoners except foreigner and death sentenced prisoners may be eligible for emergency parole for 14 days for death of parental grandfather or grandmother/ father/mother/spouse/ son/daughter/sibling and delivery of wife (except high security risk prisoner) after confirmation by the police and marriage of son/ daughter/ sibling and delivery of wife (except high security risk prisoner) after confirmation by the police provided that no extension can be granted to emergency parole,”

It can be seen that emergency parole is not admissible for marriage of niece under that Rule. On that count, the reason assigned by the Senior Prison Officer appears to be correct.

We find from perusal of the marriage invitation card that besides the name of the petitioner, names of two other persons, Shri Krishnamurthi and Shri Rajesh are mentioned. The petitioner's name is the third name on the said card. Judicial note can be taken of the fact that if the name of the petitioner is shown at Serial Number 3 and the names of Shri Krishnamurthi and Shri Rajesh being stated prior to that of the petitioner, they would be elder to the petitioner. There is no statement in the writ petition that these two persons named in the marriage invitation card are not the brothers of the petitioner. Hence the statement that there is no Karta in the family *prima-facie* is not acceptable in view of the marriage invitation card.

The learned counsel for the petitioner has sought to rely upon the decision in *Asfaq Versus State of Rajasthan & Others* [(2017) 15 SCC 55] to support the prayer for release on parole. On perusal of the aforesaid decision, it is seen that the Hon'ble Supreme Court has referred to various situations under which parole could normally be granted. Therein it was found that the matter was governed by the Rules of the Central Government framed in the year 1955 and it was felt that it was necessary to update those Rules. In the present case the field is governed by the Rules of 1959 as amended as recently on 13.07.2021 and as such provision for release on parole for the marriage of niece does not find place therein, the aforesaid decision would not come to the aid of the petitioner.

Hence for aforesaid reasons, the writ petition stands dismissed. No costs.

(G. A. SANAP, J.)

(A. S. CHANDURKAR, J.)

APTE