

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

CRIMINAL WRIT PETITION NO. 96 OF 2022

Aakash S/o. Gajanan Salunkhe,
Aged – 30, (C-5964), Presently at
Central Prison Amravati, Dist. Amravati.PETITIONER

---- **VERSUS** ----

1. State of Maharashtra through
Divisional Commissioner, Amravati,
Dist. Amravati.
2. Superintendent of Central Prison,
Amravati, Dist. Amravati. **RESPONDENTS.**

Mr. A. Y. Sharma, Advocate for the Petitioner.
Mr. M. K. Pathan, A.PP for the Respondents/State.

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

DATE : 08.04.2022.

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

1. Heard.
2. **RULE.** Rule made returnable forthwith.
3. By this petition under Article 226 of the Constitution of India, the petitioner is challenging order dated 04.12.2021 refusing to release the petitioner on regular parole on the ground that the petitioner is not eligible for being released under Rule 4(2) and

4(13) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (in short 'the Rules of 1959').

4. The petitioner is a convict for the offences punishable under Sections 302, 364, 397, 201 of the Indian Penal Code and is directed to suffer imprisonment for life. The petitioner is undergoing his imprisonment in Amravati jail

5. The petitioner on 24.09.2021 filed an application seeking his release on regular parole on the ground that the mother of the petitioner is suffering from a serious illness. The respondent No.1, by impugned order, rejected the application for regular parole on the ground that the petitioner is not eligible for being released on regular parole. The petitioner has therefore filed present petition challenging the said order.

6. This Court on 16.02.2022 directed the respondents to file reply. In pursuance of which the respondent No.2 has filed reply stating that the petitioner is not eligible for being released on regular parole as the offences alleged against the petitioner fall within the purview of Rule 4(2) and 4(13) of the Rules of 1959.

7. We have carefully considered the impugned order and Rules 4(2) and 4(13) of the Rules of 1959.

8. Rules 4(2) and 4(13) are read as under :

“4. Eligibility for furlough -

All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough :-

(1) -----

(2) Prisoners convicted of offences under sections 392 to 402 (both inclusive) of the Indian Penal Code (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective Section).

(13) Who is sentenced for offences such as terrorist crimes, mutiny against state, kidnapping for ransom (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section).”

9. On careful perusal of the Rule 4(2) of the Rules of 1959, it appears that the prisoner is eligible for being released on furlough after completion of his stipulated sentence. It is undisputed fact that the petitioner has completed the sentence for which he has convicted for the offences covered under Rule 4(2)

and Rule 4(13) of the Rules of 1959. It needs to be noted that the Rule 4(13) contemplates an offence of kidnapping for ransom defined under Section 364A of the Indian Penal Code. The petitioner has been convicted for the offence punishable under Section 364 of the Indian Penal Code, therefore, the disqualification under Rule 4(13) is not attracted. Hence, said Rule could not have been applied in the case of the petitioner to hold him ineligible for regular parole.

10. Since it is undisputed fact that the petitioner has already completed the stipulated sentence within the purview of Rule 4(2) of the said Rules, there is no impediment for releasing the petitioner on regular parole.

11. Therefore, we pass the following order :

- i] The petition is allowed.
- ii] The impugned order dated 04.12.2021 passed by the respondent No.1 is quashed and set aside.
- iii] The respondent No.2 is directed to release the petitioner on regular parole for a period of 45 days on such conditions as the Authority deems fit and proper

as per Rules within a period of one week from the date of production of this order.

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

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