

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 26 OF 2023

Shaikh Ayyub @ Babar Shaikh Kader
C/8300 ...Petitioner

Versus

The State of Maharashtra & Ors ...Respondents

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Ms. S. P. Chate, Advocate for the Petitioner.

Mr. M. M. Nerlikar, APP, for the Respondent – State.

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CORAM : SMT. ANUJA PRABHUDESSAI &
R.M. JOSHI, JJ

DATE : FEBRUARY 08, 2023

PER COURT :

1. With consent, heard finally at the stage of admission.

2. The Petitioner has challenged the order dated 29th November, 2022 passed by the Respondent No. 3 rejecting his application for grant of regular parole and further sought direction against the Respondent Nos. 2 and 3 to release him on parole leave for 45 days as per rule 19(2)(a)(i)(ii) of the Prisons (Bombay Furlough and Parole) Rules, 1959.

3. Heard learned Counsel for the Petitioner and learned APP for Respondent – State.

4. We have perused the records and considered the

submissions advanced by learned Counsel for the respective parties.

5. The records indicate that the Petitioner is a convict, undergoing sentence of life imprisonment for committing offence under Section 302 & 323 read with Section 34 of the Indian Penal Code. The Petitioner had sought parole on the ground that his wife is pregnant and due date for delivery is 14th February. The request for regular parole has been rejected on the ground that as per the proviso to rule 19(2) the application for regular parole cannot be considered till expiry of one year from his / her last release on parole except in case of death of his / her near relative.

6. Learned Counsel for the Petitioner submits that the full bench of this Court in the case of Kantilal Nandlal Jaiswal Vs. Divisional Commissioner, Nagpur and Another reported in 2019 (6) Mh.L.J. 186 has struck down the proviso to Article 19(2) of Rules of 1959, introduced in terms of notification dated 16.04.2018 as the same is violative of Articles 14 and 21 of the Constitution of India. She further submits that the proviso to rule 19(2) having been struck down

the request for parole could not have been rejected for the reasons stated in the order.

7. It is not in dispute that the Full Bench of this Court in Kantilal Nandlal Jaiswal (supra) has held proviso to Rule 19(2) of the Prison (Bombay Furlough and Parole) Rules, 1955 is violative of Article 14 and 21 of the Constitution of India and has accordingly struck down the said proviso. This being the position rejection of the application on the basis of the said proviso reflects total non-application of mind.

8. It is pertinent to note that Rule 19(3) stipulates that the prisoners are eligible for regular parole on the ground of (1) Serious illness of either parent, spouse, son or daughter; (2) Delivery of wife & (3) Natural calamity. Further rule 19(3)(C)(ii) provides that the prisoner shall be eligible for subsequent release on regular parole, after completion of one and half year of actual imprisonment to be counted from his last return either from furlough or regular parole. In the instant case, it is not in dispute that the Petitioner was not granted regular parole for completion of 1^{1/2} year of actual

imprisonment from his last return from parole but he was released on emergency parole due to the outbreak of Covid 19 pandemic. It is also stated that the Petitioner had surrendered back to jail within the prescribed time. Hence, the fact that the Petitioner was released on emergency parole could not be the reason for rejecting his request for regular parole, sought on the ground of delivery of his wife, which is one of the grounds within the proviso of Rule 19(3) of the Prison (Bombay Furlough and Parole) Rules, 1955. Hence, the impugned order is *ex facie* illegal and cannot be sustained and hence, the same is quashed.

9. Learned APP submits that the genuineness of the reason for parole needs to be verified. Hence, the matter is remitted with directions to Respondent No. 3 to consider the request of the Petitioner for grant of regular parole on the ground of delivery of his wife and to take the decision as expeditiously as possible and in any case within a period of four days from the date of receipt of the order.

10. Writ Petition is disposed of accordingly.

11. All concerned to act upon authenticated copy of this order.

(R.M. JOSHI, J.)

(SMT. ANUJA PRABHUDESSAI, J)