

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 357 OF 2023

Javed Rahman Shaikh

...Petitioner

V/s.

State Of Maharashtra And Ors.

...Respondents

Mr. Mujahid S. Ansari, Appointed Advocate for Petitioner.

Mr. Ajay Patil, A.P.P. for the Respondent-State.

CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.

DATE : 20th JANUARY, 2023.

P.C.:-

1. By the present Petition, Petitioner has prayed that, he be released on death parole for a period of seven days without imposition of any Escort and charges to enable him to perform his father's last rituals.

2. Heard Mr. Mujahid Ansari, learned Advocate appointed to represent Petitioner and Mr. Ajay Patil, learned A.P.P. for Respondent-State. Perused record.

3. Record indicates that, Petitioner is undergoing sentence at Nashik Road Central Prison, Nashik. The father of Petitioner passed away on 3rd December 2022 at Kurla Mumbai. The Petitioner therefore filed death parole application for performing last rites of his father with the jail Authority. The Deputy Inspector General of Prisons, Central Region, Aurangabad by its Order dated 15.12.2022 considered the request of

Petitioner and permitted him to go for or to be released on death parole for a period of 4 days under Escort and on payment of necessary charges in that behalf. The Police Inspector attached to State Reserve Police Force, Police Headquarter Nashik City, by its communication dated 17.12.2022 has informed the Superintendent, Nashik Road Central Prison, Nashik that, for a period of 4 days, the Petitioner will have to pay total charges of Rs.1,01,760/- for the necessary Police Escort.

4. Mr. Mujahid Ansari, learned Advocate for Petitioner submitted that, the Petitioner's brother is the only sole earning member in the family and his monthly income is Rs.12,000/-. That, it is therefore extremely difficult for the Petitioner or to his brother to pay the Escort charges of approximately Rs.1,02,000/- for attending the last rituals of his father. He submitted that, the request of Petitioner that, he may be released on emergency death parole leave for a period of 4 days without escort may be considered sympathetically by allowing the present Petition.

5. Learned A.P.P submitted that, Petitioner was earlier on 04.08.2016 released on parole leave, however, he did not report back to Jail Authority within stipulated period and absconded. Therefore, a Crime bearing No.203 of 2016 under Section 224 of Indian Penal Code was registered with Chunabhatti Police Station, Mumbai. That, the Petitioner was to be arrested and brought back to jail after a lapse of 10 days thereafter. He submitted that, it is the reason that, the Petitioner is being

released on parole leave in Police escort. It is submitted that, in view thereof, the Order dated 15.12.2022 passed by the Competent Authority may not be interfered with.

6. Perusal of record indicates that, Mr. Mohammad Shafi Rehman Shaikh is the younger brother of Petitioner and is doing business of sale of onions and potato at Qureshi Nagar, Kurla (East), Mumbai. As per the report submitted by Chunabhatti Police Station, his approximate monthly income is Rs.12,000/-. The Police have certified that, the said person is eligible to remain as surety to the Petitioner.

7. Taking into consideration the said fact, it appears to us that, there is substance in the contention of the learned Advocate for Petitioner that, it is difficult for Mr. Mohammad Shafi Rehman Shaikh to pay approximate amount of Rs.1,02,000/- towards escort charges for 4 days for the Petitioner. It is not in dispute that, Petitioner is required to attend the last religious rituals/rites of his father.

8. After taking into consideration over all view of the matter and in the interest of justice, we hereby direct that, the Petitioner be released on death parole leave for a period of two days on his payment of Rs.30,000/- with the concerned Competent Authority.

9. The Superintend Nashik Road Central Prison, Nashik is directed to release the Petitioner in Police Escort on his payment of Rs.30,000/- with the concerned Competent Authority.

10. Petition is partly allowed in the aforesaid terms.

All the concerned to act on the basis of an authenticated copy of this Order.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)