

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

CRIMINAL WRIT PETITION NO. 47/2023

Amit s/o. Gajanan Gandhi,
aged 38 years (In Jail).,
Convict No. C-5876,
Central Prison, Nagpur.

PETITIONER

VERSUS

State of Maharashtra through
the Superintendent of Prison,
Central Prison, Nagpur.

RESPONDENT

Mr. Nitesh Samundre, Advocate for petitioner.
Mrs. N. Tripathi, APP for respondent/State.

CORAM

: VINAY JOSHI AND
VALMIKI SA MENEZES JJ.

DATE OF JUDGMENT ON

: 24.01.2023

ORAL JUDGMENT (PER VINAY JOSHI, J.)

Rule. Rule made returnable forthwith.

2. Heard finally by consent of learned counsel appearing for the parties.

3. The petitioner has been convicted in Sessions Case No. 348/2001 for the offence punishable under Sections 302, 376, 364,

201 of the Indian Penal Code. The maximum sentence imposed is to undergo imprisonment for life. It has been submitted that after categorization, the petitioner was to undergo 28 years of imprisonment.

4. The petitioner is seeking regular parole in terms of Rule 19(3) of the Prisons (Bombay Furlough and Parole) Rules, 1959 ('Prison Rules') for the purpose of delivery of his wife. Initially, Divisional Commissioner, Nagpur Division, Nagpur has allowed parole application vide order dated 12.10.2022, however the same authority has reviewed its own order and rejected the same on 01.12.2022. The petitioner has initially challenged the impugned rejection order dated 01.12.2022 in Criminal Writ Petition No. 902/2022. This Court has expressed that the petitioner was already on furlough leave and unless he surrenders himself, his urge cannot be considered. This Court has also directed the petitioner to surrender on or before 13.01.2023 with liberty to make fresh request on his surrender. In pursuance of that, the petitioner has come up before us after surrender.

5. It reveals that authority has rejected petitioner's application for regular parole on the ground that the petitioner has not surrendered after furlough leave, therefore, application cannot be considered in terms of Rule 19(3)(C)(ii) of the Prisons Rules. The said Rule contemplates that the prisoner shall be eligible for subsequent release on regular parole, only after completion of one and half year of actual imprisonment to be counted from his last return either from furlough or

regular parole.

6. Admittedly, when the application was made as well as the petitioner has applied to this Court, he was on furlough leave. meaning thereby, he does not fit himself in the above criteria. In pursuance of direction of this Court, the petitioner has surrendered at Central Prison, Nagpur on 13.01.2023 and thereafter, has renewed his prayer. The petitioner has produced several medical papers to substantiate the causes that he is expecting a child. Particularly, our attention has been invited to the medical papers that probably tomorrow (25.01.2023) is a date of delivery of his wife. It is contended that there is nobody to look after the petitioner's wife in such condition. It is informed that already petitioner's wife has been admitted at the Government Medical College and Hospital, Nagpur for the said purpose. There is no denial of facts about cause canvased for rejecting parole.

7. The only resistance is on account of the rider requiring petitioner to make him self eligible in terms of Rule 19(C)(ii) of the Prison Rules which concededly has not been complied with. Rule 19(C) (ii) has been substituted by notification dated 10.02.2022. Prior to notification, there was a similar proviso under Rule 19(2) making a condition of eligibility for regular parole of staying in Jail for the period of one year after expiry of his last release on emergency or regular parole. The said proviso to Rule 19(2) was subject matter of challenge before the Full Bench of this Court in case of ***Kantilal Nandlal Jaiswal***

Vs. Divisional Commissioner, Nagpur, 2019(6) Mh.L.J. 186, wherein the said proviso has been held to be violative to Articles 14 and 21 of the Constitution of India.

8. We find that the newly introduced condition of Rule 19(2) (C)(ii) is having similar flavor which has been already dealt by the Full Bench of this Court. Full Bench in para 34 of the decision has expressed that there is no sense in not entertaining the urge for release earlier in peculiar facts. In case at hand, the petitioner has produced document to show that his wife is about deliver a child tomorrow (25.01.2023) and there is nobody in the family to take care. Considering the peculiar facts of the case, we are inclined to grant regular parole.

9. In view of above, petition is allowed. Impugned order dated 01.12.2022 is hereby quashed and set aside. We hold that the petitioner is entitled for regular parole for 30 days on usual terms and conditions which may be imposed by the Prisoner Authority as it deems fit and proper.

10. Petition stands disposed of in above terms.

11. Act on steno copy.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

JITENDRA
BHARAT
GOHANE

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