

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

CRIMINAL WRIT PETITION NO. 182/2023

Santosh S/o. Ramdas Kalwe,
Aged 30 years, R/o. Dapori,
Post Kandli, Tah. Malegaon,
Dist. Washim
(C/10050, Central Prison, Nagpur)

PETITIONER

VERSUS

1. Deputy Inspector General of
Prison (East Region), Nagpur.
2. Superintendent of Jail, Central
Prison, Nagpur.

RESPONDENTS

Mr. S. Chande, Advocate for petitioner.
Mr. N. R. Tripathi, APP for respondent Nos. 1 & 2.

CORAM

: VINAY JOSHI AND
BHARAT P. DESHPANDE JJ.

DATE OF JUDGMENT

: 10.03.2023

ORAL JUDGMENT (PER VINAY JOSHI, J.)

Rule. Rule made returnable forthwith. Heard learned
counsel appearing for the parties finally.

2. The petitioner raises a challenged to the order dated
06.03.2023 passed by respondent No. 1 Deputy Inspector General of

Prison (East Region), Nagpur, whereby allowed the special parole leave with Police escort. The petitioner seeks for modification of said order by contending that the condition of grant of parole under the Police Escort is quite harsh and due to financial constraint, the petitioner is not able to meet.

3. The learned APP would submit that the petitioner was initially awarded with capital punishment which was commuted by this Court into life imprisonment. Considering the gravity of offence, suitable order may be passed.

4. The petitioner was convicted for the offence punishable under Section 302, 364-A, 201 of the Indian Penal Code. The Trial Court has sentenced him with capital punishment. In confirmation case, this Court has commuted the sentence into life imprisonment vide judgment and order dated 27.07.2022. The petition is in jail since 10.06.2013.

5. The petitioner has applied for special parole in terms of Section 19(2)(A) of the Prisons (Bombay Furlough and Parole) Rules, 1959 ('Rules of 1959') for the purpose of marriage of his real brother scheduled to be held on 13.03.2023 at Village Dapuri, Tahsil Malegaon, District Washim. The Authority though passed impugned order on 06.03.2023 which communicated him on 09.03.2023 and

therefore, immediately the petitioner is before this Court. It is submitted that the petitioner is financially weak and therefore, could not deposit the Police Escort charges. It is contended that since last nine years, the petitioner is in Jail till date, neither he was released on parole leave or furlough leave. The petitioner undertakes to immediately surrender in Jail and therefore, requested for grant of special parole without Escort.

6. The matter has come up before us today at 02.30 p.m. by way of urgent circulation. Tomorrow and day after tomorrow being holidays and marriage is scheduled on 13.03.2023, there is no time to seek response from the State by taking instruction from the Jail Authority. Obviously, if the matter is placed on next working day i.e. on 13.03.2023, this petition would become infructuous. In the circumstances, we have considered the cause canvased by the petitioner. The authority have granted permission, but with a rider of Police Escort. The Police Paper indicates that the proof of offence is of kidnapping for ransom and committed murder of minor. The Trial Court has arrived on the conclusion that it is rarest of the rare case, however, death penalty has been commuted to the imprisonment for life. We are in disadvantage to have report from the Jail Authority about petitioner's conduct and the Police Report, if any, on his application for special parole. Since the petitioner was

convicted under Section 364-A of the Indian Penal Code, he was not eligible for regular parole or furlough leave.

7. Having regard to the gravity of offence, we are not inclined to grant special parole without Police Escort as the chances of abscondance cannot be ruled out.

8. Rule 19(C)(ii) of the Rules of 1959 empowers the Deputy Inspector General of Prison to reduce the amount of Police Escort or direct to deposit post release or even in exceptional case, completely waive the payment of charges. Having regard to the petitioner financial inability and all other situation, we deem it appropriate to partially waive the Police Escort charges. In view of that, following order:-

(I) Petition is partly allowed. Impugned order dated 06.03.2023 is modified to the extent of release of petitioner on special parole for attending marriage on 13.03.2023 at Village Dapuri, Tahsil Malegaon, District Washim.

(II) The petitioner to deposit Rs. 10,000/- towards Police Escort charges prior to his release and further amount of Rs. 10,000/- within four weeks thereafter.

(III) The Jail Authority may impose any other suitable condition as he deem fit.

9. Petition stands disposed of in above term.

10. The Authority shall act on the authenticated copy of this order.

(BHARAT P. DESHPANDE, J.)

(VINAY JOSHI, J.)

Gohane

**JITENDRA
BHARAT
GOHANE**

Digitally signed by
JITENDRA BHARAT
GOHANE

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