



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

CRIMINAL WRIT PETITION NO.265 OF 2023

Petitioner : Ibrahim Kha Niyamat Kha (C-3759),
Aged about 53 Years, Occu. Nil,
(Presently in Central Prison, Amravati)

– Versus –

Respondents : 1. State of Maharashtra,
Through S.P. Central Jail, Amravati.

2. Divisional Commissioner,
Amravati Division, Amravati.

Mr. Raju Kadu, Advocate for the Petitioner.
Mrs. N.R. Tripathi, A.P.P. for the Respondents.

CORAM: **VINAY JOSHI AND M.W. CHANDWANI, JJ.**

DATE : **26th OCTOBER, 2023.**

J U D G M E N T : *(Per Vinay Joshi, J.)*

Rule. Rule made returnable forthwith. Heard finally by the consent of the learned Counsel for the parties.

02] The petitioner was convicted for the offences punishable under Sections 302 and 149 of the Indian Penal Code in Sessions Trial No.41/1997 and serving the sentence since last 13 years. The petitioner has applied for regular parole on account of illness of his mother. The petitioner's application

was considered and respondent No.2-Divisional Commissioner vide order dated 15/02/2023 has granted parole leave on certain conditions. It is the petitioner's grievance that despite said order, he has not been released.

03] The State resisted the petition by contending that in view of Rule 19(3)(B)(ii) of the Prisons (Bombay Furlough and Parole) Rules, 1959, the petitioner is ineligible for subsequent release as he has not undergone actual imprisonment for six months after earlier release. It is submitted that the petitioner was earlier released on furlough leave for 28 days on 20/12/2022 and surrendered on 18/01/2023 and thus the period of six months has not been lapsed. Moreover, it is submitted that after passing of this order, the petitioner has applied for furlough leave, which was granted in the month of August, 2023, which he availed.

04] On the other hand, the applicant's learned Counsel would submit that though in the meantime the petitioner was released on furlough, however, the order of the Divisional Commissioner dated 15/02/2023 ought to have been complied by the Superintendent of Prison. Reliance is placed on the order of this Court dated 31/07/2023 in Criminal Writ Petition No.272 of 2023, wherein this Court has directed the Superintendent of Prison to act upon the order of the Divisional Commissioner. There can be no dispute that

the order of the Divisional Commissioner has to be obeyed. However, in the case in hand, the situation differs, as in the meantime, the petitioner was released on furlough in the month of August, 2023. The very purpose of grant of regular parole was to meet certain exigency i.e. serious illness of his mother. After the impugned order, the petitioner was out of jail and thus to our mind, considering the peculiar scenario, if the exigency still exists, the petitioner is at liberty to apply fresh, which shall be considered independently.

05] We made it clear that Rule 19(3)(B)(ii) would not come in the petitioner's way in view of the decision of this Court in the case of Kantilal Nandlal Jaiswal vs. Divisional Commissioner, Nagpur Division, Nagpur and others – 2019 SCC OnLine Bom 13216.

06] In view of above, the petition stands disposed of. Rule is discharged

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)

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