

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

CRIMINAL WRIT PETITION NO. 491 OF 2023

Sachin Bharat Borule (C-131)
 Aged about 30 years, Occ.: NA,
 R/o. Parawa, P.O. Talegaon,
 Tah. & Distt. Yavatmal. } ... Petitioner

Versus

1. Divisional Commissioner
 Amravati, Dist. Amravati.
 2. Superintendent of Police,
 Yavatmal. } ... Respondents

Ms. Ratna A. Singh, Advocate for petitioner.

Ms. Nandita Tripathi, APP for respondents/State.

CORAM : VINAY JOSHI, AND
VALMIKI SA MENEZES, JJ.
DATE : 10.08.2023.

ORAL JUDGMENT: (PER: Vinay Joshi,J)

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

(2) The petitioner is a convicted for the offence punishable under Section 302 of the Indian Penal Code and undergoing imprisonment for life. The petitioner has applied for

regular parole leave however, it was rejected by respondent No.1 – Divisional Commissioner, Amravati, vide impugned order dated 08.06.2023, which is subject matter of challenge. While rejecting the petitioner's regular parole leave on account of mother's illness, it has been stated that the petitioner has not tendered supporting medical papers. Secondly, it is stated that in view of amended Rule 19(3)(C) (ii) of the Prisons (Bombay Furlough and Parole) Rules, 1959, the prisoner shall be eligible for subsequent release on regular parole only after completion of 1½ years on actual imprisonment to be counted from his last return.

(3) Learned counsel appearing for applicant relied on the decision of this Court in case of ***Amit s/o Gajanan Gandhi Vs. State of Maharashtra*** in Criminal Writ Petition No.47/2023 decided on 24.01.2023, wherein the said issue has been exclusively dealt in para 7 and 8 of the decision which reads as below:

“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.”

(4) In view of that, we find no reason to deviate from the expression made by this Court in that regard. The matter remains to be about verification of medical papers. According to the petitioner, at the time of inspection, he has tendered certain medical papers, however, the authority did not consider the same. The said exercise needs to be undergone for appropriate decision.

(5) In view of above, petition is partly allowed. We hereby quash and set aside impugned order 08.06.2023 passed by Divisional Commissioner, Amravati. We direct petitioner to produce all medical papers with respondent No.2, before the Jail Superintendent, Yavatmal, within one week. On receipt of papers, the authority shall verify the same and pass appropriate orders within four weeks thereafter.

(6) The petition stands disposed in above terms.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

Prity