

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

CRIMINAL WRIT PETITION NO. 810 OF 2022

PETITIONER : Anil S/o Bhanudash Waghmode,
(IN JAIL) Age - 45 (C-10128) Central Prison,
Nagpur. Dist. Nagpur.

V E R S U S

RESPONDENTS :

1. State of Maharashtra
through Divisional Commissioner,
Nagpur, Dist. Nagpur.
2. Superintendent of Central Prison,
Nagpur, Dist. Nagpur.

Shri A. Y. Sharma, Advocate for petitioner.
Ms. N. R. Tripathi, Additional Public Prosecutor for respondent Nos.1
and 2.

CORAM:- VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.
DATED : 17/02/2023.

ORAL JUDGMENT : (PER VINAY JOSHI, J.) :

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of learned counsel appearing for the parties.
2. The petitioner has challenged the order dated
12/10/2022 passed by respondent No.1 rejecting parole leave of
45 days on account of illness of his wife.
3. The petitioner is convicted for the offence punishable
under Sections 302, 120-B of the Indian Penal Code and Sections

3(1)(i), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act, 1999 (MCOC Act) vide Judgment and order dated 02/05/2018. On the date of filing of parole leave application, the petitioner has undergone imprisonment for nearabout 10 years.

4. The petitioner would submit that his wife is suffering from lumber vertebra disc prolapse c buldge at level of lumber 4 and 5. In support of his contention, medical certificate of Dr. Shahid Ali Khan has been tendered. On receipt of proposal, verification report was called from the concerned Assistant Police Commissioner. On account of adverse report, the parole application has been rejected. The authority has stated that there is no extreme medical urgency, secondly, the rejection is primly on the ground that the petitioner belongs to some gang and if he is released, there is threat to the life of the informant and witnesses of the case.

5. The respondent No.2 has filed reply retrieving the grounds canvassed by authority for rejection. In addition to that, it has been submitted that since the petitioner was convicted for the offence of MCOC Act, and belongs to gang his release may create law and order problem.

6. The learned counsel appearing for the petitioner would submit that in past, on three occasions, petitioner was released on

furlough and parole leave. On each occasion, he has surrendered in time as well as there was no law and order problem. The petitioner has produced a copy of order of this Court dated 25/08/2021 passed in Criminal Writ Petition No.546/2021, wherein this Court took a note about earlier two release and petitioner's surrender within stipulated period. It reveals from the said order that the objection about adverse police report was also raised but, sans material, this Court has turned down the objection.

7. We have carefully examined the entire material as well as police verification report dated 04/08/2022. It reveals from the report that petitioner's wife is taking treatment in the hospital and she is residing alone. Moreover, report also indicates that the petitioner while on leave, gave regular attendance to the concerned police station. It appears that merely because the police report has expressed anticipated threat, parole leave has been rejected. In absence of any material, the authority is not justified in rejecting the parole leave on the background of earlier three releases. Neither the police report nor the impugned order bears a reference about the sufficient supporting report and in absence of that, order needs to be set aside.

8. In view of that, following order is passed :-

- i] The criminal writ petition is allowed.
- ii] The impugned order dated 12/10/2022 passed by respondent No.1 rejecting the regular parole leave application of the petitioner is hereby quashed and set aside.
- iii] The respondent No.1 is directed to grant regular parole leave as per the Rules on usual conditions to its satisfaction. The said order shall be passed within one week from the communication of this order.
- iv] Rule is made absolute in the above terms.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

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