

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

CRIMINAL WRIT PETITION NO. 902 OF 2022

Amit Gajanan Gandhi (In Jail)

Vs.

State of Maharashtra through Divisional Commissioner, Nagpur Division and another)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri N. Samudre, Advocate for petitioner.

Ms S. S. Jachak, Assistant Government Pleader for respondents/State.

CORAM :- A.S.CHANDURKAR AND MRS.VRUSHALI V. JOSHI, JJ.

DATE :- JANUARY 12, 2023.

In view of notice for final disposal issued earlier, the learned counsel for the parties have been heard at length.

The petitioner after his conviction for the offence punishable under Sections 302 and 376 of the Indian Penal Code, 1860 is suffering the said sentence. On 22.07.2022 the petitioner moved an application for grant of parole on the ground that his wife was pregnant and she required the treatment. There was an adverse police report dated 20.09.2022. By an order dated 12.10.2022 the Divisional Commissioner granting the said application and directing the petitioner's release on parole for a period of 45 days. The petitioner was required to comply with various conditions in the order. According to the petitioner, despite complying with the conditions mentioned in the order, the matter was again placed before the respondent no.1 vide communication dated 10.11.2022. Thereafter, on 01.12.2022 the Divisional Commissioner considered the matter and found that the petitioner had returned back to prison after furlough leave on 11.05.2020. Thereafter on 11.05.2022 he was granted emergency parole and he returned back on 31.05.2022. In view of the provisions of Clause 24 of the Maharashtra Prisons (Bombay Parole and Furlough Leave) Rules, 2018 (for short, the said Rules), the Divisional Commissioner proceeded to cancel the

earlier order dated 12.10.2022. The petitioner in the meanwhile was released pursuant to the grant of furlough leave on 01.12.2022 for 28 days. He has thus challenged the order dated 01.12.2022 cancelling the earlier order dated 12.10.2022.

While issuing notice, the learned Vacation Judge on 28.12.2022 extended the time to surrender till 04.01.2023. That time has been extended by subsequent orders till today.

Shri Nitesh Samudre, the learned counsel for the petitioner submits that the Divisional Commissioner was not justified in cancelling the earlier order dated 12.10.2022. The reliance placed on the provisions of Rule 19(3) (C) (ii) of the said Rules was not proper and was wrongly relied upon by the authorities. The provisions of Rule 24 (C) of the Rules could not have been relied upon for cancelling the said order. The learned counsel for the petitioner placed reliance on the order dated 18.05.2022 of the Hon'ble Supreme Court in Special Leave Petition (Criminal) Dairy No(s).12262 of 2022 (*Aadil Rafuque Shaikh Vs. The State of Maharashtra*) wherein the time to surrender was extended since the wife of the appellant therein was expecting a child. He submitted that similar extension be granted to the petitioner to surrender. The learned counsel also relied upon Criminal Application(APPW) No.228 of 2022 filed with that prayer alongwith the medical papers of the petitioner's wife. Since there was no other person in the family to look after his wife, it was prayed that such time be extended till the delivery of his wife. It was thus prayed that the relief as prayed for be granted.

Ms. S. S. Jachak, learned Additional Public Prosecutor for the respondents/State opposed the writ petition. By relying upon the affidavit in reply filed by the respondent no.2 it is submitted that the petitioner was released on Corona parole leave on 11.05.2022 and he surrendered on the due date on 31.05.2022. For being entitled to release on regular parole/furlough, it was necessary for the petitioner to have undergone actual imprisonment for a period of one and half year thereafter. Since such

imprisonment was not undergone, it was found that the petitioner was not entitled for regular parole under Rule 19(3)(C)(ii) of the Rules of 1959 and therefore the earlier order dated 12.10.2022 came to be revoked. The petitioner was already released on furlough leave for a period of 28 days and was required to surrender on 30.12.2022. In view of extension of time to surrender, the petitioner has got benefit of the said order till today. It is thus submitted that no relief be granted to the petitioner.

We have heard the learned counsel for the parties and perused the documents on record. It is undisputed that by the order passed by the Competent Authority the petitioner was directed to be released on furlough leave for a period of 28 days. He was accordingly released on 01.12.2022 and due date for surrender was 30.12.2022. The petitioner has till date not surrendered in view of the interim orders passed in the present proceedings. It is seen that initially the petitioner was released on Corona parole leave on 11.05.2022 and he surrendered on 31.05.2022. As per the provisions of Rule 19 (3)(C)(ii) of the said Rules of 1959 as amended, for being eligible for subsequent release on regular parole, the prisoner is required to complete one and half year of actual imprisonment from his last returned either from the furlough or regular parole. Admittedly, the petitioner has not completed period of one and half year from earlier such release. It is for that reason that the respondent no.1 has revoked the order granting regular parole to the petitioner that was passed on 12.10.2022. We do not find any legal infirmity in the order dated 01.12.2022 passed by the respondent no.1 since the provisions of Rule 19(3)(C)(ii) of the Rules of 1959 as amended are not satisfied. The order dated 01.12.2022 passed by the respondent no.1 therefore does not deserve to be interfered with.

Coming to the request for extension of time to surrender is concerned, once it is found that the petitioner was not entitled to be released on regular parole and his furlough leave of 28 days has come to an end, he would be required to surrender thereafter. The petitioner was released on 01.12.2022 and is yet to surrender though his furlough leave is exhausted. There is no provision pointed out to extend furlough leave. As a

consequence of upholding the order dated 01.12.2022, extension of time to surrender after 28 days of furlough leave cannot be granted. The order on which reliance is placed by the learned counsel for petitioner in the case of *Aadil Rafique Shaikh* (supra) grants time to surrender in the peculiar facts of that case. In that case, the appellant was convicted under Sections 302 and 323 of the Indian Penal Code read with Section 135 of the Maharashtra Police Act, 1951. His conviction was upheld by the High Court and he approached the Hon'ble Supreme Court. The High Court itself granted time of four weeks to the said appellant to surrender after noting that he was on parole. This time to surrender was thereafter extended by two months by the Hon'ble Supreme Court. The facts of the present case are quite distinct. In this case, there is no order granting regular parole to the petitioner. The petitioner was released on furlough leave which has now expired. His fresh request for release can be considered only after he surrenders in Jail. We do not find any reason to further extend the time to surrender. The petitioner has been granted extension from 31.12.2022 till today.

For aforesaid reasons, the writ petition stands dismissed. Pending application stands also disposed of.

The petitioner shall surrender at Central Prison, Nagpur on **13.01.2023**.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

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