

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

945 CRIMINAL WRIT PETITION NO. 52 OF 2024

SHIVAJI GANESHRAO JAWALE

VS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Petitioner : Mrs. Chate Sharda Pundlik

APP for Respondents/State : Mr. M.M. Nerlikar

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 09.01.2024

PER COURT :

Heard both the sides.

2. The petitioner who is a life convict is aggrieved by the order rejecting his application for parole leave of 45 days only on the ground that by virtue of the Prisons (Bombay Furlough and Parole) Rules 1959 as amended by the notification dated 10.02.2022 a prisoner would be eligible to have a parole leave only after expiry of one and half year from the return from previous furlough or parole leave.

3. The learned advocate for the petitioner submits that in spite of such a rule, this Court has been directing release of the prisoners on parole irrespective of the fact that the period of one year or one and half year since last return from furlough or parole leave has not expired. She would advert our attention to some such orders (Page 15 to 19).

4. The learned advocate for the petitioner also adverts out attention to the decision of the full bench of this Court in the matter of *Kantilal Nandlal Jaiswal vs Divisional Commissioner, Nagpur; (2019) 6 Mh.L.J. 186*, wherein

the then proviso to clause 2 of Rule 19 which was also on similar lines was struck down being violative of Article 14 and 21 of the Constitution of India.

5. The learned A.P.P. submits that in fact the full bench had struck down the proviso which is no longer on the statute-book. It is by virtue of a fresh clause resorted to by the authority while passing the impugned order, the petitioner has been found to be ineligible to a parole leave since the period of one and half year from the last return of furlough or parole leave has not expired.

6. Though there is no specific challenge to the clause which is being relied upon while passing the impugned order, it is a matter of record that the coordinate benches of this Court have been directing grant of parole leave overlooking the clause preventing such prisoners from applying for a parole leave for a specific period since last return.

7. Independently, in our considered view, what has been struck down by the full bench was in the form of a proviso which read as under :

“Provided that, a prisoner shall not be released on emergency or regular parole for the period of one year after the expiry of his last emergency or regular parole.”

Even the clause 3 of Category ‘B’ of Rule 19(3) has a similar effect as was the effect of the proviso thereby preventing a prisoner from seeking release on parole for a specific period since last return.

9. In view of above state of affairs, in our considered view, when the full bench of this Court has for the reasons assigned in the judgment has expressly struck down the proviso having a similar effect, in our considered view, this Court will have to be consistent in ignoring the specific bar for a prisoner to apply for a parole leave for specific period since his last return from furlough or parole leave.

10. In the circumstances, we allow the criminal writ petition partly. The impugned order is quashed and set aside. The matter is remitted back to the respondent no. 2 who shall pass a fresh order on the petitioner's application for parole leave on its own merits but shall not reject it only on the ground that the period of one and half year since his last return from furlough or parole leave has not expired. The fresh order shall be passed as expeditiously as possible, and in any case, within two weeks from today.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

mkd/-