

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

37 CRIMINAL WRIT PETITION NO. 668 OF 2024

Rahim S/o Raees Khan (c-5424)

VERSUS

The State Of Maharashtra And Others

...

Advocate for Petitioner : Mr. Rupesh Anil Jaiswal

APP for Respondents : Mr. M.M. Nerlikar

...

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

DATE : 08 APRIL 2024

PER COURT :

Heard both the sides. Learned Advocate for the petitioner, on instructions, submits that the petitioner would not pray for 'prayer clause – B' and the petition be considered only to the extent of 'prayer clause – C'.

2. The petitioner's application for regular parole has been turned down by the impugned order only by referring to Rule 19(3)(g)(ii) of the Maharashtra Prisons (Bombay Furlough and Parole Leave) (Amendment) Rules, 2022 on the ground that a period of one and half year since last return from parole or furlough leave is not over.

3. Though in a different context, a full bench of this Court in *Kantilal Nandlal Jaiswal Versus Divisional Commissioner, Nagpur*,

(2019) 6 Mh.L.J. 186, has struck down a similar bar contained in a proviso, as violative of Article 14 and 21 of the Constitution of India.

4. This Court has been expressly directing that the request shall be considered ignoring the specific bar contained in similar provision of the statutory period being not over since previous return.

5. We have been referred to a similar direction contained in the order passed in Criminal Writ Petition No.52/2024 (Shivaji Ganeshrao Jawale Vs. State of Maharashtra) dated 09.01.2024.

6. Similarly the learned APP also submits that independently all these similar clauses putting a bar for consideration of the request for leave by the prisons, are being reconsidered by the State pursuant to the observations of the full bench.

7. The writ petition is partly allowed. The impugned order is quashed and set aside.

8. The respondent No.3 – Divisional Commissioner, shall pass a fresh order on the petitioner's application for parole on its own merits, but shall not reject it only on the ground that a period of one and half year has not lapsed, after the last return from the leave.

9. 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.]