



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 830 OF 2024

Ranjana Nitin Wadile and another .. Petitioners

Versus

The State of Maharashtra .. Respondent

...
Advocate for petitioner : Mr. Joslyn Anthony Menezes
APP for the respondent – State : Mr. G.A. Kulkarni
...

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

DATE : 01 MAY 2024 (In Chamber)

ORDER (MANGESH S. PATIL, J.) :

This is an obvious attempt to somehow manipulate the system and circumvent the rules for soliciting an order. The petitioners are seeking emergency parole under the Prisons (Bombay Furlough and Parole) Rules, 1959 ("**Prisons Rules**") for petitioner no. 2 who is lodged in Nasik Central Prison.

2. The matter has been moved before us on a holiday on the ground that mother of petitioner no. 2 has died at Dondaicha, Taluka – Sindkheda, District – Dhule. It is averred that the petitioners could not get any legal assistance at Mumbai to file a petition before the Principal Seat.

3. In spite of the fact that admittedly the Court which has convicted the petitioner no. 2 i.e. District and Sessions Court Mangaon, is under the jurisdiction of the Principal Seat and he is lodged in the Central Prison at Nasik and still instead of moving this petition before the Principal Seat, the petitioners have been bold enough to file it here under the pretext that it is an emergency and the death has occurred within the jurisdiction of this bench. This is clearly in breach of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960, which does not admit of any exception.

4. In our considered view, this is an abuse of the process of law. Entertaining such a petition by this bench would be gross impropriety.

5. The learned advocate Mr. Menezes would advert our attention to the full bench judgment of this Court dated 25 January 2021 in the matter of ***The State of Maharashtra Through, Superintendent, Nashik Central Prison, Nashik Vs. Guddu @ Kansha Wahab Shaikh; 2021 SCC OnLine Bom 81*** (Criminal Application No. 2073 of 2020 in Criminal Writ Petition No. 1362 of 2020) and particularly he read out to us paragraph no. 15 of it. He would submit that place of convicting court is inconsequential in the matter of parole and there is reference even to the place where the emergency occurs.

6. Paragraph no. 15 of the judgment reads as under:-

"15. We may have to examine the aspect as to whether there is any nexus between conviction by trial court in a district and grant or refusal of parole. In this respect, it would be seen that conviction of a person for an offence committed has different considerations, is an absolutely different context and dominion. Whereas, parole, as can be seen from the rules, would be occasioned on the specific reasons as have been enumerated under the Parole Rules, viz: death or marriage of close relatives or pandemic, illness, delivery of child, natural calamity etc. and would be circumscribed by the eligibility criteria referred to thereunder. It appears that there is seldom any nexus between a conviction and a parole. Place of court convicting has no significance and does not appear to play any role in the matter of granting or refusal of parole."

Purport of the observations can be correctly understood in the context of the other observations and the ultimate decision.

7. Suffice for the purpose to observe that the issue that was referred to the Full bench and the observations in paragraph no. 24, were as under :-

" Whether, a convict/prisoner can challenge the rejection of his parole application, only before the Forum of this Court having jurisdiction over the district in which the rejection order was passed and is precluded from approaching the bench having jurisdiction over the district in which the Trial Court convicting him/her is situated? "

...

"24. Foregoing discussion leads us to consider that while there does not appear to be any nexus between grant or refusal of parole and place of court convicting, ordinarily a prisoner/convict would have to approach a forum of this court having jurisdiction over the district in which order of rejection is passed. But a convict/prisoner is not precluded from approaching the bench having jurisdiction over the district in which trial court has convicted him, if the order of rejection of parole is passed in the area of jurisdiction of

forum whereunder conviction has taken place or if a nexus between refusal to grant parole and conviction could reasonably and validly be said to exist. However, in the latter case, it could always be open in rare and exceptional cases for the Bench before which the proceeding is presented to examine the plea at the threshold and decide whether to receive the proceedings or not.”

8. While answering this issue, the afore-mentioned observations were made to demonstrate that the place of Court convicting the accused is irrelevant to determine the bench of the High Court in which the petition/s should be filed in the light of Chapter XXXI of the Bombay High Court Appellate Side Rules, 1960 in respect of challenge to the order refusing to grant parole.

9. It must be borne in mind that parole being a right which accrues to a prisoner while he is lodged in a prison, the jurisdiction of the bench under Chapter XXXI would depend upon the location of the prison and not the place of the Court convicting the accused.

10. The inference being sought to be drawn by the learned advocate by referring to the above mentioned paragraph is clearly fallacious and out of contest. In the matter in hand, neither the prisoner nor even the Court which convicted the petitioner no. 2 situate within the territorial jurisdiction of this bench as circumscribed by Chapter XXXI of the Bombay High Court Appellate Side Rules. The submission of the learned advocate is not sustainable in law and is emphatically refuted.

11. The Petition is dismissed.

12. Needless to state that it would always be open for the petitioners to prefer a petition at the Principal Seat.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/