



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1579 OF 2024

Shaikh Naser @ Nasir @ Channu
S/o Hasan, C/ -90,
Age-38 years, Occu:Nil,
R/o-serving Sentence at Hasool
Open Prison, District-Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary, Home Department,
Mantralaya, Mumbai-400 032,
- 2) The Deputy Superintendent
of the Open Prison, Harsool,
District- Ch. Sambhajinagar,
- 3) The Divisional Commissioner,
Ch. Sambhajinagar Division,
District- Ch. Sambhajinagar.

...RESPONDENTS

...
Ms. Sharda P. Chate Advocate for Petitioner.
Mr. G.A. Kulkarni, A.P.P. for Respondents.
...

**CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.**

DATE : 3rd SEPTEMBER, 2024

ORDER :

1. Present petition was filed initially for direction to respondent

No.3 to decide the application 20th August 2024 filed by the petitioner for extension of parole leave for 30 days. However, as that application was decided during the pendency of this petition, by way of amendment, the petitioner challenges the order dated 30th August 2024 passed by respondent No.3. He now seeks extension of parole leave by 30 days.

2. Heard learned Advocate Ms. Chate for the petitioner and learned APP Mr. Kulkarni for respondents.

3. Learned Advocate for petitioner has taken us through the documents produced and submits that the leave was granted to the petitioner for supervising the construction of his house. In fact, the father and brother of the petitioner are also undergoing conviction in the same case. There is nobody to look after the work of construction. Their family need a house. The construction is incomplete and the contractor has assured that the construction will be completed within few days. The site of construction is a slum area and therefore, there is no permission of Municipal Corporation. The reason for extension is genuine but was not considered by respondent No.3.

4. Per contra, the learned APP strongly objects the petition and submits that the reason given for extending the leave is not legal. Parole leave can be extended only in certain circumstances. As per Rule 19(3)(c) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, parole leave can be granted if near relative is seriously ill, pregnancy of wife of convict and in natural calamity. Parole cannot be granted for construction of house. However, on humanitarian ground 30 days leave was already granted, which was enjoyed by the petitioner. Now, extension cannot be granted as it is not certain when the construction would be completed. Major portion of construction is still remaining. Only columns have come up. The order of rejection is not illegal.

5. The first and foremost thing is that the petitioner has already enjoyed 30 days parole leave. We will not go into the aspect, whether the ground on which his leave was granted was legal and justified or not. We are concerned with extension of leave sought by the petitioner. The most important point is that even as per his contention, there is no legal permission for construction of house. There appears to be no efforts to seek permission. Constitutional powers cannot be invoked to carry out illegal work. We cannot allow illegal construction to come up with

the help of legal order. There is no other reason given by the petitioner for extension of leave. If we see photographs, affidavit of said contractor and others documents, the same would show that much work is yet to be completed. When such reason is not available for seeking leave, it cannot be considered for extension also.

6. We do not find this to be a fit case where we should exercise our constitutional powers. There is no reason for setting aside the impugned order.

7. The Writ Petition stands rejected.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE