



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1653 OF 2024

Sunil S/o Nimba Patil.
Age: 39 years, Occ: Convict,
R/o. at present Confined in
Open Prison Paithan,
Dist. Chhatrapati Sambhajnagar.

.. Petitioner

VERSUS

1. The State of Maharashtra
Secretary Home Department, Mantralaya,
Mumbai.
2. Inspector General of Prisons,
Pune.
3. Divisional Commissioner,
Chhatrapati Sambhajnagar.
4. Superintendent, Open Prison Paithan,
Dist. Chhatrapati Sambhajnagar.

.. Respondents

...
Mr. Rupesh A. Jaiswal, Advocate for the petitioner.
Mr. A. D. Wange, APP for the respondents/State.

...

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

DATE : 07 OCTOBER 2024

ORDER :

. Heard both the sides and perused the documents.

2. The petitioner has challenged the order passed by respondent Nos.2 and 3 dated 29.08.2024 and 26.06.2024 respectively, thereby rejecting the parole leave for the petitioner.

3. It could be gathered from the petition that the petitioner preferred application for grant of parole leave on the ground that his wife has been advised to undergo operation. Respondent Nos.2 and 3 refused the said application basically on the point that the medical certificate is not certified by Government Hospital in view of Rule 23 (2) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (hereinafter referred to as "the Rules"), as stood amended by Notification dated 16.04.2018.

4. Both the authorities have taken note of the fact that the petitioner is ready to give surety and the said surety has been considered as eligible by the inquiry officer. He has also given an undertaking on stamp paper. The past conduct of the petitioner also taken into consideration that he surrendered on given date. Even the report of the police making inquiry into the prison have stated that the reason now given that is for the purpose of surgery of the wife appears to be correct.

5. Now, the rejection appears to be on two grounds i.e. there is no time gap of minimum one and half years from the earlier surrender or leave as stated in Rule 19(3)(C)(ii) of the Rules. That Rule came to be amended in 2022. Second is the non observance of Rule 23 of the Rules regarding verification and attestation of Civil Surgeon, Medical Superintendent/Local Medical Officer of Public Health Centre.

6. The petitioner is relying upon the Full Bench decision in ***Kantilal Nandlal Jaiswal Vs. Divisional Commissioner, Nagpur and Anr.*** reported in ***2019 ALL MR (Cri.) 4003***, wherein the earlier Rule i.e. Rule 19(3)(C)(ii), 19(3)(B)(1)(ii), 19(3)(B)(2)(ii) of the Rules were struck down being violative of Article 14 and 21 of the Constitution of India. We are aware that the constitutional validity of this rule is again challenged in many petitions before us. At this stage, we are only passing reference in view of the fact that when the earlier rules were struck down as unconstitutional, by way of amendment, the Government has only reframed the rule by keeping major sentences/words as it is, except replaced the word “one year” to “one and half year”. Therefore, respondent Nos.2 and 3 ought to have consider the decision in ***Kantilal Nandlal Jaiswal (Supra)***.

7. Now, as regards Rule 23(2) as amended in 2018, it is stated that the medical certificate submitted by prisoners for parole leave shall be verified and attested by Civil Surgeon/Medical Superintendent/Local Medical Officer of Public Health Centre. Here, in the present case, the certificate that is submitted is issued by a private hospital. When the same rule states that on receipt of an application of a parole, the competent authority may make such inquiry as it considers it necessary, then the application cannot be rejected on the ground that the medical certificate is not verified and attested by the authorities mentioned in sub-rule (2) of Rule 23 of the Rules. The authority can take upon itself the work of verification for its satisfaction.

8. Now, the learned APP is submitting that the competent authority would undertake the work of verification. In view of the said statement, the impugned orders are set aside. Respondent Nos.2 and 3 are directed to reconsider the application of the petitioner and may also undertake the task of inquiry, which in fact was stated by the police officer itself in the report that the reason is correct.

9. The exercise of deciding the application by respondent No.3

be made within a period of three weeks from today. It should not be rejected on the ground that the petitioner has not completed the period of one and a half year from his previous surrender.

10. With these directions, the writ petition stands disposed of.

[S. G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm