

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.2715 OF 2024

Vivek Krishnamurari Shrivastav .. Petitioner

Versus

The State of Maharashtra and Ors. .. Respondents

...

Mr. Sandesh More, for the Petitioner.

Mr. H. S. Venegavkar, P.P. a/w Dr. Ashvini A. Takalkar, APP, for the State.

...

**CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED : 9th JULY, 2024

P.C:-

1. On 28.06.2024, Mr. Venegavkar, the learned Public Prosecutor representing the Respondent No. 2 made a categorical statement that, the request of the petitioner is under consideration and within a period of one week, the decision shall be taken.

2. Abiding by the said statement, a decision is taken and the Superintendent, Sub-Jail, Silvassa addressed a communication to Mr. Venegavkar on 04.07.2024 informing that, the convict had applied for Parole before the District Collector, Collector Office, Surat- Gujarat, but the Additional District Magistrate, Surat by his communication dated 28.06.2024 reported that, Case No. 252 of 2019 of the convict

is pending in the Bombay High Court and hence his application for Parole could not be considered and it was informed that, the applicant may apply for bail before the Competent Court.

3. We fail to understand the reasoning adopted in the said communication, as mere pendency of the proceedings in form of an Appeal before this Court may not be a ground to reject an application for Parole, as it is the exclusive power vested in the Superintendent of Prison and the Competent Authorities, who are competent to sanction the release of convicted prisoner on Parole, as specifically set out in the Rule 18 of the Prison (Bombay Furlough and Parole) Rules, 1959, and as far as the prisoners convicted by the court situated within the State of Maharashtra but confined in prisons situated outside the State, it is the Additional Director General of Police and the Inspector General of Prison and Correctional Services, Maharashtra State, Pune, who is authorized to pass an order.

In all other cases, it is the Divisional Commissioner of the Division, who can order release on Parole, and being aggrieved by the said orders, the hierarchy of the authorities to whom appeal shall be preferred is also set out.

In any case, we are not satisfied with the reasoning cited in refusing consideration of the Application of the applicant and even Mr. Venegavkar is not in position to offer any explanation, in law, in refusing to entertain such an application.

It is in this background and in the wake of the exigency expressed by the petitioner, we have heard the learned counsel for the petitioner and Mr. Venegavkar, the learned Public Prosecutor for the State.

4. The petitioner, a convict sentenced to suffer rigorous imprisonment for life on being found guilty of commission of an offence punishable under Sections 302, 120B r/w 34 of the Indian Penal Code, by the Sessions Judge, Dadra and Nagar Haveli, Silvassa, in Session Case No. 15 of 2012, has approached this Court in rather unusual circumstances making a request for his release on Parole.

The petitioner state that he stand convicted on 26.10.2018 and the Appeal filed by him, vide Criminal Appeal No. 252 of 2019 is pending before the Bombay High Court. The petitioner who is incarcerated since almost 9 years, has approached this Court by stating, that his son has been selected for admission in Master of Data Science Program at RMIT University, Melbourne in Australia, and the curriculum is to commence from 22.07.2024 and its duration is 2 years. On being offered a seat in this program, there is a requirement of deposit tuition fees in the Indian currency of Rs.36,70,518.53. In addition, the student has to bear the traveling and stay expenses, while he undertake the said curriculum.

Alongwith the petition, the necessary document, an intimation received for his admission in RMIT University is also placed on record.

5. In light of the said communication it is evident that, the petitioner's son Vaibhav Shrivastav, in pursuance of his application of 19.03.2024 has received an offer letter, offering him a seat in the program in the said communication, which is to commence from 22.07.2024, and it also highlight the approximate tuition fee as well as the non-tuition fee to be paid. The total deposit in the offer letter is stated to be AU\$ 17,361.20, and in addition, the terms of the offer are also part of the said offer letter.

6. It is in the aforesaid background, the petitioner make a request for his release on Parole for a period of 30 days.

Mr. Venegavkar, by relying upon the Prisons (Bombay Furlough and Parole) Rules, 1958 and in particular Rule 19 would submit that, for the reasons cited in the petition, his case would not fall either within Rule 19(1),(2) or (3), as the contingencies stipulated in case of Emergency Parole, Regular Parole and Special Parole are specific in nature, and it is only in these circumstances, the convict deserve his release on parole leave.

According to him, for bidding farewell to his son and on the pretext that, for arranging the money required for meeting the expenses for his tuition fees and travel is not a ground which would fall within the purview of Rule 19 in either of the contingencies and, therefore, though the authorities have refused to exercise discretion in granting this benefit, and this Court would not show any indulgence as the contingency

stipulated is not covered by any of the clause in Rule 19.

7. We have heard the learned counsel Mr. More for the petitioner and Mr. Venegavkar, the learned Public Prosecutor for the State, who has vehemently opposed the release of the petitioner on Parole.

When we consider the aim and object of the Rules formulated for releasing the convict either on parole or on furlough, one thing is very prominent, i.e. the said release is warranted so as to enable the inmate to maintain continuity with his family life and deal with the family matters and also to save him from the evil effects of continuous prison life and maintain his mental balance by creating active interest in life and to enable him to remain hopeful for the future.

Time and again, the Rules have received a positive interpretation and the Courts have construed the Rules liberally in favour of a convict.

The provisions of Parole and Furlough have been time and again looked towards as a humanistic approach towards the convicts lodged in Jail for an act purely attributed to them. However, while they remain to be incarcerated and are undergoing the punishment for their act, in order to afford an opportunity to them to be in touch with the outside world and to arrange for their family affairs as though behind bars, the convict continue to be someone's son, husband, father, brother and upon being released, though for temporary period on Furlough or in an emergency situation on parole, like death of

a member of family or or to attend to a member on account of his illness, the Furlough and Parole have received approval as conditional release of a prisoner which is governed by the Rules of 1959, governing such a release from custody though for a short temporary period by ensuring that he duly returns in the prison.

8. The core of the benefits being made available under the Prisons (Bombay Furlough and Parole) Rules, 1959, enacted in exercise of the power conferred by clause 5 and 28 of Section 59 of the Prisons Act, 1894, being to repose the faith of a convict in the system, and the fact that he has been convicted and sentenced to undergo life imprisonment or a sentence imposed upon him, only upon his release periodically either for certain reason or otherwise on account of undergoing a particular number of days in incarceration, his hope to be alive and his bond with his near and dear ones may be encouraged and also inspire his confidence in the prison system.

If one turn to Rule 19, which contemplate release of a prisoner on Parole and in case of 'Emergency' Parole for a period of 7 days, when there is a death in the family which include his close relative like grandfather, grandmother, father, mother, spouse, son, daughter etc., on 'Special Parole' for the period of 4 days, for attending the happy occasions like marriage of son, daughter, siblings and 'Regular Parole', so as to cater to the need of his family which includes serious illness of father/mother/spouse/son/daughter, delivery of his wife or in order to cater to the family in case of natural calamities,

such as house colabs, flood, fire, earthquake etc., we miserably fail to understand why a happy occasion like this, where his son who has secured an admission in a prestigious University in Australia and since he seek temporary release relief on that count, so that he can arrange for the financial resources and also bid farewell to his son, who is going to depart from the country for a period of two years, why the benefit to Parole shall be denied to him by restricting it to the circumstances set out therein and not in a situation which the petitioner has brought before us.

Grief, is an emotion, so, is happiness and if Parole can be granted to share grief, why not to share a happy occasion or moment.

9. The petitioner has placed on record the offer letter from the concerned University and a reading of the same would necessarily lead as to an inference, that for getting him admitted in institution and for arranging for his traveling expenses, huge amount has to be garnered and unless and until the father is available to arrange for this amount, his young son may loose a chance and the offer which he has received.

In addition, we also feel that, this is a moment to rejoice, when his son deserve a goodbye with best wishes being bestowed upon him from his father, and we do not intend that he should be kept away from this moment, which brings pride to him, being a father. If for the purpose of celebration of marriage parole can be granted, we fail to understand why

merely because the rule do not contemplate such a contingency, the benefit of this rule shall not be extended to the petitioner.

10. On the last date, we have asked Mr. Venegavkar to appraise us about the conduct of the petitioner as an inmate in Jail and on instructions he report back that in the past he was released on Parole and Furlough, but has reported back on time.

In the wake of the above, we deem it appropriate to release the petitioner on parole leave for a period of 10 days, which shall commence from 12.07.2024 and can be availed upto 22.07.2024, which include the period of his travel to Noida, to be united with his family.

On 23.07.2024, the Petitioner shall report back to the prison.

11. The release of the petitioner shall be subject to execution of a personal bond and one local surety in the tune of Rs.25,000/-.

On his release, while he remain on Parole, he shall mark his attendance in Police Station Kotwali, Sector 58, Noida, District - Gautam Buddh Nagar, State of Uttar Pradesh - 201 307, on every alternate day, between 5.00 p.m. to 6.00 p.m.

12. With this direction, the Writ Petition is disposed off.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)