



Judgment

wp106.24

IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION No. 106 OF 2024.

Ansar Khan Ibrahim Khan Pathan,
Aged about 38 years,
Convict No.C/10862, presently
at Central Prison, Nagpur.

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PETITIONER.

VERSUS

The Superintendent, Central Prison,
Nagpur.

...

RESPONDENT.

Mr. M.N. Ali, Advocate for the Petitioner.
Ms N. Tripathi, A.P.P. for the Respondent.

CORAM : VINAY JOSHI AND
VRUSHALI V. JOSHI, JJ.

DATE : FEBRUARY 02, 2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

Rgd.

Rule. Rule is made returnable forthwith and by consent of the learned Counsel present for the parties, the matter is taken up for final disposal.

2. The petitioner, a life convict, has applied for death parole which was initially granted for 7 days with police escort. Since the petitioner was not in a position to bear necessary charges, he has applied for modification. After considering the financial constraints of the petitioner, the Authority has modified the order by reducing the period of emergency parole from 7 days to 1 day with police escort.

3. Being aggrieved by the modified order the petitioner has approached this Court. It is submitted that there is no justification in reducing the period of death parole, as well as the condition of police escort. Reliance is placed on the decision of this Court in case of **Wasim Khan Azim Khan .vrs. The Superintendent, Central Prison, Nagpur – Criminal Writ Petition No.376/2023** decided on **09.06.2023**.

4. In said decision, this Court has considered the relevant provisions of Rule 19[1][A] of the Prisons [Bombay Furlough and Parole] Rules, 1959, as well as the earlier pronouncement of this Court in case of **Dilip Sopan Pawar .vrs. State of Maharashtra and another – Criminal Writ Petition No.354/2019 decided on 18.02.2019**, with special reference to paragraph no.7 therein, which reads as under :

“Two issues arise in these Petitions. We have already quoted clause (A) of Sub-Rule (1) of Rule 19 of the said Rules of 1959. If this provision is considered in the context of Sub-Rule (2) of Rule 19 which deals with the regular parole, even if a prisoner attracts a disqualification for grant of furlough as per Rule 4 of the said Rules of 1959, on that ground, emergency parole cannot be denied. Sub-Rule (2) of Rule 19 specifically states that all the prisoners who are eligible to grant of furlough, shall be eligible for the regular parole. Thus, if a prisoner is dis-entitled to furlough by virtue of the disqualifications laid down in Rule 4, he is dis-entitled to regular parole under Sub-Rule (2) of Rule 19. Such a condition is not incorporated in Sub-Rule (1) of Rule 19 which deals with the

emergency parole.”

In the light of said decision, there is no hurdle in granting emergency parole which according to Rule 19[1][B] of the Parole Rules, shall be for an initial period of 7 days, which can be extended upto 14 days.

5. We have gone through the police report which has not doubted the reason regarding death of father of the petitioner. Our anxiety was to consider the police report to see whether any adverse material has been adduced to make the petitioner dis-entitle for the parole leave, however, the police report is not adverse to that effect.

6. Petitioner's father expired on 18.12.2023, and he intend to follow the customary rituals. When the statute permits 7 days period, unless there are reasons, we do not see any justification to curtail the period less than that. Moreover, there is no report that if the petitioner is released on emergency parole without escort, there is likelihood of some untoward occurrence.

7. In view of above, criminal writ petition needs to be allowed, hence, the following order.

ORDER

- (i) Criminal Writ Petition is allowed and disposed of.
- (ii) The impugned order dated 20.12.2023 and 20.01.2024 passed by the Superintendent, Central Prison, Nagpur is hereby modified to read, that the petitioner be released on emergency parole leave for 7 days without any escort. The Authorities shall act accordingly by imposing suitable conditions which it may deem fit.
- (iii) Rule is made absolute in aforesaid terms.

JUDGE

JUDGE