



Judgment

902 wp 602.24

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

CRIMINAL WRIT PETITION NO. 602/2024

Shyamal Shankar Dutta
(In Morshi Open Prison)
aged about 34 yrs., Occ NA,
R/o. Shodhpur, Apurva Nagar,
North 24 Pargana, West Bengal.

... **PETITIONER**

VERSUS

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Open Prison,
Morshi, Dist. Amravati.

... **RESPONDENTS**

Mrs. Ratna Singh, Advocate for petitioner.
Mrs. N. Tripathi, Addl. Public Prosecutor for respondent Nos. 1 & 2.

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

DATE : 19.08.2024.

ORAL JUDGMENT (PER: VINAY JOSHI, J.) :

Rule. Rule made returnable forthwith. Heard finally with
consent of learned counsel appearing for the parties.

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2. The petitioner has been convicted for the offence punishable under Sections 302, 324, 506(ii) of the Indian Penal Code and undergoing life imprisonment. The petitioner after completion of initial three years of imprisonment has been transferred to the Open Prison, where he has undergone ten years of imprisonment. The petitioner has applied for grant of parole leave on 16.10.2023 for illness of his wife and for delivery. The Authority has rejected parole leave vide communication dated 26.07.2024 by stating that as there is adverse police report, and the petitioner is not entitled for parole leave due to bar under Rule 19(3)(g)(ii) of the Prison (Bombay Furlough and Parole) Rules, 1959 (“the Rules of 1959”).

3. So far as the last ground about Rule 19(3)(g)(ii) of the Rules 1959 is concerned, the said aspect has been considered by this Court in Full Bench decision in case of ***Dipak Sudhakar Wakalekar Vs. State of Maharashtra and ors., 2011 Cr.L.J. 3263*** and therefore, it no longer survives. We have gone through the adverse police report. It is stated that the surety provided by the petitioner is not capable. Moreover, one additional reason has been assigned by the Police that

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Lok Sabha Election 2024 was to be held in West Bengal and there would be problem of breach of peace. By the time, the Lok Sabha Election is over. The learned counsel appearing for the petitioner has attracted our attention to proviso of Rule 6 of the Rules of 1959 to contend that when the convict is confined in open prison, he can be released on parole or furlough by the Sanctioning Authority by dispensing with the requirement of surety. In this regard, she also relied on the decision of this Court in case of Dipak Wakalekar (supra).

4. Moreover, the learned counsel appearing for petitioner would submit that on the basis of same surety, the petitioner was released on furlough and he had returned on due date. There is no resistance to this submission. The learned APP would submit that the petitioner's wife has already delivered a baby on 24.07.2024 and thus, the ground no longer survives. In response, the petitioner reiterates that he has requested for parole leave not solely on the ground of delivery but also of ailment of his wife so that he can take care of his wife. Moreover, one should consider the post delivery care of lady by

her kin.

5. In the above circumstances, we hold that the petitioner is entitled for grant of parole leave, hence following order:-

(I) Petition stands allowed. We hereby quash and set aside the impugned order dated 26.07.2024.

(II) The Authority shall grant parole leave to the petitioner for the period as permissible under the Rules by imposing conditions which the Authority may deem fit.

(III) The Authority shall dispense with the condition of surety while imposing conditions and he be released on personal bond.

6. Petition stands disposed of in above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)