



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

CRIMINAL WRIT PETITION NO. 771 OF 2023

Umesh Ashokrao Athavale (C-5668)

Aged about 35 years, Occ.: NA,
R/o. Samta Nagar, Near Gautam
Buddha Statue, Walgaon,
Tah. Bhatkuli, Distt. Amravati

}

... Petitioner

Versus

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Police,
Yavatmal.

}

... Respondents

Mrs. Ratna Singh, Advocate for petitioner.

Ms. Nandita Tripathi, APP for respondent Nos.1 & 2.

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

DATE : 09.01.2024

ORAL JUDGMENT: (PER: Vinay Joshi,J)

Rule. Rule made returnable forthwith. Heard finally
by consent of both the learned counsel for the parties.

(2) The petitioner has been convicted for the offences punishable under Sections 302, 307, 143, 147 and 148 of the Indian Penal Code and sentenced to suffer imprisonment for life. The

petitioner has undergone imprisonment for about six years till the date of filing of petition.

(3) The petitioner has applied for regular parole in terms of Rule 19(3) of the Prisons (Bombay Furlough and Parole) Rules, 1959, for the purpose of ailment of his wife. Police report has not doubted the cause for parole leave. However, vide impugned order dated 27.09.2023, respondent No.1 – Divisional Commissioner, Amravati, has declined to grant parole leave only on account of Rule 19(3)(C)(ii) in terms of Notification dated 16.04.2018 and 10.02.2022. Precisely, it was rejected on the ground that the petitioner has not undergone actual imprisonment of one and half years after his earlier release from parole or furlough leave.

(4) This issue fell for consideration before Full Bench of this Court in case of *Kantilal Nandlal Jaiswal Vs. Divisional Commissioner, Nagpur, 2019(6) Mh.L.J. 186*, which has struck down the said rider being violative of Articles 14 and 21 of the Constitution of India. It was followed by this Court in several decisions including in case of *Amit s/o Gajanan Gandhi Vs. State of Maharashtra* in Criminal Writ Petition No.47/2023 decided on 24.01.2023. By applying the said

law we do not find any impediment in allowing the petition.

(5) In view of above, the petition is allowed. Impugned order dated 27.09.2023 is hereby quashed and set aside. We hold that the petitioner is entitled for regular parole on usual terms and conditions which may be imposed by the Prison Authority as it deems fit and proper. Necessary order be passed within four weeks.

(6) Petition stands disposed of in above terms.

[MRS. VRUSHALI V. JOSHI, J.]

[VINAY JOSHI, J.]

Prity