



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

CRIMINAL WRIT PETITION NO. 266 OF 2024

Kisansingh Shersingh Bavari (C-2515),
Aged about 60 years, Occ.: NA,
R/o. Samata Nagar, Gitti Khdan,
Wardha, Tah. & Distt. Wardha.

... **PETITIONER**

...**VERSUS**...

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Jail,
Amravati Central Prison, Amravati.

... **RESPONDENTS**

Ms. R. A. Singh, Advocate for petitioner.
Ms. N. R. Tripathi, A.P.P. for respondents/State.

CORAM : SMT. VIBHA KANKANWADI AND
MRS.VRUSHALI V. JOSHI, JJ.

DATED :- 13.06.2024

ORAL JUDGMENT (PER : SMT. VIBHA KANKANWADI, J.):-

1. **Rule.** Rule is made returnable forthwith. Heard finally by consent of both the sides.
2. By way of present petition, the petitioner has challenged the order dated 01.08.2023 passed by respondent No.1. He seeks direction for his release on parole for a period of 45 days.

3. The petitioner convinced that his wife is ill and on that ground he had filed application and annexed all the relevant documents. He is undergoing imprisonment for life in view of the conviction awarded on 21.03.2003. The petitioner says that he has undergone imprisonment for about 16 years and 13 days. The application filed by him came to be rejected on the ground that the Superintendent of Jail, Amravati Prison has not recommended the release of the petitioner. It was stated that when the petitioner was released on furlough in 2005, he was brought back by the police after about 854 days and once again in 15.02.2011 when he was released on parole on 30 days, he was required to be arrested and brought back after about 1731 days. Further he has also been convicted for the offence under Section 224 of the Indian Penal Code. The petitioner contends that those acts were in the past but thereafter also he was released either on furlough or on parole and he has returned to the Jail on the due dates. Therefore, now in view of the fact that his ailing wife is required to be treated, his leave ought not to have been rejected.

4. Affidavit-in-reply has been filed on behalf of the respondent No.1 mainly on the count that the petitioner is undergoing sentence for committing offences under Sections 302, 353 read with Section 34 of the Indian Penal Code. He has also been convicted for the offence under Section 224 of the Indian Penal Code when he had jumped the parole leave.

Police verification report received shows that the petitioner had failed to surrender in prison on time in the past and taking into consideration that the relatives of the petitioner are of criminal minded nature, there is every possibility of breach of peace and tranquility by the petitioner if he is released on parole. It has been strongly submitted that the petitioner is not entitled for furlough leave under Rule 4(10) of the Prisons (Bombay Furlough And Parole) Rules, 1959 and, therefore, he is also not entitled under Rule 19(3) of the same Rules for release on regular parole.

5. In order to cut short, it can be said that learned Advocate for the petitioner as well as learned A.P.P. have made submission supporting their contention. The learned Advocate for the petitioner also points out that in earlier writ petition i.e. Criminal Writ Petition No.738/2023 filed by the petitioner, this Court by order dated 08.01.2024 wherein the order dated 20.07.2023 by learned Special Police Inspector, General Prison was challenged, set aside the said order and directed the respondent No.1 to pass an appropriate order for grant of furlough leave. She also points out that accordingly, the petitioner was released for 28 days and he has reported to the prison within a time. Therefore, now, the past shortcomings cannot be considered as hurdle when it appears that there is no dispute as regards the fact that the wife of the petitioner needs medical treatment. Learned A.P.P. strongly submits that in view of the earlier

incidences, the petitioner is not entitled and, therefore, certainly, his application has been likely rejected.

6. It will not be out of place to mention here that recently on 08.01.2024 in Criminal Writ Petition No.738/2023 by the petitioner all the earlier lapses on the part of the petitioner of the year 2005 and 2011 were taken note of by this Court and it was observed that “though in the past there were lapses, however, thereafter, the petitioner has surrendered on due date”. Therefore, once again the same lapses cannot be considered or cannot be the ground for rejection. Even one thing will have to be observed that the order which was under challenge in the earlier writ petition was dated 20.07.2023 and the earlier order was passed by this Court on 08.01.2024 whereas the order which is under challenge in this petition was passed on 01.08.2023. That means on the date when the earlier writ petition i.e. Criminal Writ Petition No.738/2023 was heard and disposed of by this Court, the present impugned order was already passed but it appears that the petitioner has not taken care to bring it to the notice of this Court, nor even it was pointed out by the respondent No.2. However, what was granted therein was furlough and in the present case what is prayed is the parole. At the time of rejecting the application in the present matter, there is no denial nor even in the affidavit-in-reply on behalf of respondent No.1 to the fact that the wife of the petitioner is ill and, therefore, we are of the opinion that it is appropriate case to set aside the impugned order and

direct the respondent No.1 to release the petitioner on parole. Hence, we proceed to pass the following order :

i] The impugned order dated 01.08.2023 passed by the respondent No.1 is hereby quashed and set aside.

ii] The respondent No.1 is directed to pass an appropriate order for grant of parole leave for appropriate period within a period of three weeks from today by imposing suitable conditions.

7. Rule is made absolute in above terms.

(MRS. VRUSHALI V. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)