



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

Criminal Writ Petition No.459/2024

Rama Kishor Shahakar
Convict No.C/303,
Age 42 years, Occ. Nil,
(Presently Confined at Open Prison, Nagpur.) Petitioner.

Versus

1. State of Maharashtra,
through Deputy Inspector General of Prison,
Eastern Region, Nagpur.
2. Superintendent Central Prison, Nagpur Respondents.

Ms. S.P. Chavhan, Advocate for the petitioner.
Mr. Amit Chutke, APP for State.

CORAM : Smt. Vibha Kankanwadi & Mrs. Vrushali V. Joshi, JJ
DATE : 10-06-2024.

Oral Judgment (Per Smt. Vibha Kankanwadi, J.)

Rule. Rule made absolute.

2. Learned Additional Public Prosecutor waives notice for both the respondents.
3. Heard learned Advocate for the petitioner as well as learned APP for the State finally with their consent.
4. The petitioner invokes the constitutional powers of this Court under Articles 226 and 226 of the Constitution of India to challenge the 'Samaj Patra'/communication dated 31-05-2024

issued by respondent no.2 for grant of parole on account of death of his real uncle and seeks parole for seven days without Police escort and by furnishing minimum cash security.

5. The petitioner alleges that his uncle Shri Sunil Chandrakant Sahakar died on 28-05-2024 and the 14th day rituals would be performed on 11-06-2024. However, his application for grant of parole has been rejected on the count that the death of uncle cannot be considered as death of a near relative under Rule 19(1) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, 'Act of 1959'). Hence, this petition.

6. It is to be noted that the petitioner has been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code in the year 2013 and he is undergoing the punishment in open prison at Nagpur and including remission. It is stated that he has completed more than 20 years. The petitioner is ready to abide by the terms that would be imposed but he says that uncle will have to be considered as near relative and in order to support the contention the learned Advocate for the petitioner relies on the decision of this Court in Criminal Writ Petition No.1081/2014 (*Roshan Kishor Sahakar and another vs Jail Superintendent, Nagpur, Central Jail, Nagpur*) decided on 16-01-2015, wherein this Court has taken a view that perusal of Rule 19 of the Rules of 1959 reveals that definition of 'nearest relative' is not exhaustive,

but illustrative. The words used after the words 'nearest relative' cannot be given restricted meaning. In that matter also on account of death of uncle, this Court had directed the Jail Authorities to release the petitioner on parole of 10 days.

7. In *Mohammad Wasim Mohammad Imam, Bhiwaniwale vs State of Maharashtra and another* (Criminal Writ Petition No.434/2012) decided by this Court on 12-09-2012, it was held that on account of death of grandmother paroles can be granted.

8. Taking into consideration the discussion in respect of Rule 19 of the Rules 1959, it is to be noted that the description of 'nearest relative' mentioned therein cannot be restricted to certain relations only. Definitely the real uncle will have to be considered as a near relative in the Indian scenario and the family fabric. The parole application has been rejected only on the ground that Rule 19(1) of the Rule 1959 does not include name of uncle. It appears that respondent no.2 has not considered the decision of this Court in *Roshan Kishor Sahakar and another* (supra).

9. Taking into consideration the above contentions, we are of the opinion that, the request of the petitioner to release him on parole for a limited period deserves to be allowed. Taking into consideration the place where he would be required to go is also in Nagpur District and he is also placed in Nagpur District. It will does not require 07 days, but 04 days parole would be sufficient starting from tomorrow.

10. With above said observations, we proceed to pass the following order :

- (i) Writ Petition is partly allowed.
- (ii) The impugned order dated 31-05-2024 passed by respondent no.2 is hereby quashed and set aside.
- (iii) Respondent no.2 is directed to release the petitioner on emergency parole for a period of 04 days starting from tomorrow on furnishing of his personal surety of Rs. 15,000/- and sum of Rs. 5000/- which should be furnished before his release with respondent no.2.

11. We expect that the petitioner would return to the prison where he is now kept after the 04 days emergency parole is over.

12. We also direct the petitioner to supply mobiles numbers of two of his relatives to the respondent no.2 before his release.

13. Steno copy of this order be provided to the parties to act upon.

(Mrs. Vrushali V. Joshi, J.)

(Smt. Vibha Kankanwadi, J.)