

(2013) 01 BOM CK 0189

In the Bombay High Court

Case No : Criminal Writ Petition No. 3986 of 2012

Arun Shankar Ralmingam Naidu

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 31-01-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 1279 : (2013) 3 BomCR(Cri) 482

Hon'ble Judges : A.S. Oka, J;A.P. Bhangale, J

Bench : Division Bench

Advocate : Sandip R. Khurkute, instructed by Mr. Abhijeet A. Desai, for the Appellant; K.V. Saste, APP, for the Respondent

Judgement

A.S. Oka, J.—Heard the learned counsel appearing for the Petitioner and the learned APP for the State. The grievance made in this Petition received through Jail is as regards the rejection of the application for grant of parole in accordance with the Prisons (Bombay Furlough and Parole) Rules, 1959 (hereinafter referred to as "the said Rules"). The grounds on which the application has been rejected are (i) the adverse police report which records that the place of residence of the Petitioner is touching the limits of jurisdiction of Shivaji Nagar and Deonar Police Station and, therefore, the law and order situation may be created; (ii) earlier when the Petitioner was released on leave, he did not return on the expiry of period of leave.

2. We have perused the adverse police report dated 25th November 2011. The report records that the complainant and the witnesses in the case in which the Petitioner was convicted were not found. Mere apprehension is expressed that as the place where the Petitioner proposes to reside is close to the jurisdiction of Shivaji Nagar and Deonar Police Stations, the possibility of the Petitioner creating law and order situation cannot be ruled out. We have perused the report submitted by the Superintendent of Nashik Road Central Prison. Though it records that earlier when parole was granted on two occasions, the Petitioner reported late, it is also recorded in Column No. 15B that his behavior when he

was enlarged on furlough was satisfactory. Thus, it is obvious that the adverse police report is based on mere apprehension without there being any material against the Petitioner. Such report is no ground to deny the parole of the Petitioner.

3. The police report records that it was found that the Petitioner's mother was required to undergo a surgery for removing uterus and there was no one else to look after his mother. Even the surety offered by the Petitioner was found to be competent.

4. However, it is not clear whether the Petitioner's mother has already undergone surgery. Therefore, if the Application is to be reconsidered, the Petitioner will have to submit a fresh medical certificate.

5. Rule 4 of the said Rules provides that in case of certain categories for prisoners, furlough shall not be granted. One of the categories provided in Sub-Rule No. 10 is that the furlough shall not be granted to a prisoner who has in any way defaulted in surrendering himself at the appropriate time after release on parole or furlough. Rule 18 onwards of the said Rules and in particular Rules 18 and 19 thereof deal with the power to grant parole. The parole can be granted provided a case in accordance with the Rule 19 is made out. Though there is a specific prohibition in terms of sub-Rule No. 10 of Rule 4 of the said Rules as far as the grant of furlough is concerned, in the Rules there is no specific provision made to the effect that a prisoner is disentitled to parole on the ground that there was a delay on his part in surrendering after he was enlarged either on furlough or on parole. The reason for not making such provision is obvious. The grounds on which the parole can be granted are totally different from the grounds for grant of furlough. In fact, the concept of furlough is totally different from the object of grant of furlough. The parole can be granted only in case of specified contingencies set out in Rule 19. Parole is essentially granted to meet emergent situations. In the present case, the parole was sought on the ground of serious illness of the Petitioner's mother. Hence, on conjoint reading of Rule 4 and Rules 18 to 26 of the said Rules, the fact that the Petitioner did not surrender after expiry of period of furlough or parole is no ground to deny the parole. Even perusal of the Rule 28 shows that the provisions of Rule 4 have not been made applicable to the application for grant of parole though some other Rules in relation to furlough have been made applicable. In the case of *State of Maharashtra and Another Vs. Suresh Pandurang Darvakar*, the Apex Court has held that the furlough and the parole have two different purposes. The Apex Court has further held that it is not necessary to state the reasons while releasing the prisoner on furlough, but in case of parole, reasons are to be indicated in terms of Rule 19 of the said Rules. The Apex Court also noted that the Rule 20 provides that the period spent on parole is not to be counted as remission of sentence. Thus, even the Apex Court has made a distinction between the grant of parole and grant of furlough. It is obvious that while granting parole, in view of Rule 24 of the said Rules, the concerned Authority can

impose appropriate conditions such as reporting to the local police station and confining the prisoner to a particular area, etc. In this view of the above discussion, we are of the view that the application for parole requires reconsideration. Hence, we pass the following order:-

ORDER:

- (a) The impugned orders dated 17th January 2012 as well as 31st August 2012 are quashed and set aside;
- (b) It will be open for the Petitioner to produce a fresh medical certificate showing the present status of his mother's illness. Only on production of fresh medical certificate, the same application for parole made by the Petitioner shall be considered afresh;
- (c) The Application shall be considered afresh in the light of the observations made in this order;
- (d) The Application shall be decided within a period of six weeks from the date on which a medical certificate of the Petitioner's mother as set out above is produced by him;
- (e) The Petition is disposed of on above terms;
- (f) A copy of this order shall be forwarded to the Petitioner through the concerned Jail Superintendent.