

(2019) 12 BOM CK 0001

In the Bombay High Court

Case No : Criminal Writ Petition No. 769 Of 2019

Hariom Vijay Pande

APPELLANT

Vs

State Of Maharashtra And Anr

RESPONDENT

Date of Decision : 03-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 302, 34

Maharashtra Prisons (Mumbai Furlough And Parole) Rules, 1959 — Rule 19, 19(2)(C)
(ii), 22, 22(2), 23

Citation : (2019) 12 BOM CK 0001

Hon'ble Judges : Z.A. Haq, J;S.M. Modak, J

Bench : Division Bench

Advocate : Laxmi Y. Malewar, N.R. Tripathi

Final Decision : Disposed Of

Judgement

Z.A. Haq, J

01] Rule. Rule made returnable forthwith.

02] The petitioner is convicted for the offence punishable under Section 302 read with Section 34 of Indian Penal Code and is undergoing life imprisonment since 2010. The petitioner had applied for grant of parole leave on 16th July, 2018 on the ground that his wife was suffering from serious illness. According to the respondents, the application of petitioner was sent to the Office of Superintendent of Police, Azamgarh (Uttar Pradesh), from where the petitioner hails. The Police Sub-Inspector of Police Station, Azamgarh submitted his report dated 19th February, 2019, which was received by the Office of respondent No.2 on 5th March, 2019. This report shows that the claim of the petitioner (convict) that his wife was suffering from illness was correct. However, release of petitioner on parole leave was objected on the ground that there was a possibility of petitioner absconding after his release on parole leave. Parole application filed by the petitioner came to be rejected by order dated 4th June, 2019.

03] From the reply filed by the respondent No.2, it is noticed that when the petitioner was earlier released on furlough leave in January 2015, August 2018 and September 2019, every time he had surrendered himself on due date and when he was released on parole leave in May 2017, that time also he surrendered himself on due date. The report submitted by the Police Sub-Inspector, Police Station, Azamgarh does not give any details as to on what basis Police Sub-Inspector, Police Station, Azamgarh came to the conclusion that there was every possibility that the petitioner may abscond if he is released on parole leave.

Parole leave is recognized as a statutory right as per Rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 (hereinafter referred to as 'Rules of 1959' for short) and the convicts are entitled for parole leave, if the circumstances as referred in Rule 19 exist. Of course, it is not the absolute right of the convict to seek parole leave and the right is circumscribed by various other considerations including the objective satisfaction of the jail authorities and the authority competent to consider the application made by the convict for grant of parole leave. Hence, if it is recommended that parole leave should not be granted, such recommendations should be supported by proper reasons and the necessary details on the basis of which the Officer recommending that parole leave should not be granted, forms his opinion. We have noticed that the applications submitted by the convicts for grant of parole leave are considered mechanically and a sentence is inserted that parole leave should not be granted as release of the convict may result in law and order problem or the convict may abscond. Of course, Police Officials are entitled to make such recommendations and in appropriate cases, they should make recommendation of such type. However, in such situation, they should support that conclusion by recording the reasons and giving details of the material on the basis of which they form the opinion. In the present case, Police Sub-Inspector, Azamgarh has not pointed out the basis for his negative recommendation, hence it cannot be considered.

04] In the present case, we further find that there has been laxity on the part of the respondents and the concerned Police Officials at every level, which resulted in inordinate delay in taking decision on the application submitted by the petitioner for grant of parole leave. As recorded earlier, the petitioner sought parole leave on the ground that his wife was suffering from serious illness and this claim made by the petitioner is found to be correct by the Police Sub-Inspector, Police Station, Azamgarh. The facts of the present case show the apathy towards the convicts and that they are deprived of their statutory right recognized by the State Government.

05] It is relevant to note that Rule 22 of the Rules of 1959 provides for the manner in which the application for parole should be dealt with. Rule 22(2) of the Rules of 1959 lays down that on receipt of the application for grant of parole leave, the Deputy Superintendent of Police or the Assistant Commissioner of Police concerned, as the case may be, shall immediately make enquiries to

ascertain whether the ground/grounds on which parole is applied for, is/are genuine and submit report within fifteen days to the competent authority pointing out whether it recommends the grant of parole and whether there is likelihood of breach of peace, if the prisoner is released on parole.

Rule 23 of the Rules of 1959 lays down that on receipt of the application for grant of parole, the competent authority may make such enquiries, as it considers necessary, and pass such orders as it considers fit, and if the competent authority is of the view that the prisoner/convict should be released on parole, the competent authority shall make an order to that effect within 17 days from the date of receipt of enquiry report from the Deputy Superintendent of Police or the Assistant Commissioner of Police as contemplated by Rule 22 of the Rules of 1959.

06] Rule 19(2)(C)(ii) of the Rules of 1959 provides for the situations under which the prisoner/convict may be released on regular parole. It lays down that the prisoner/convict shall be eligible for next release on parole leave or regular parole leave after completion of one year of actual imprisonment and subsequent releases then onwards after completion of six months of actual imprisonment, to be counted from his last return every time either from furlough or regular parole.

07] Because of the gross laxity of the respondents and the concerned officers, the release of the petitioner on parole leave is delayed unnecessarily and the right of the petitioner/convict as per Rule 19(2)(C)(ii) for subsequent release on parole leave is frustrated.

08] Considering the earlier conduct of the petitioner, we are of the view that the petitioner should be released on regular parole for thirty days, of course, subject to the conditions as may be imposed by the concerned authority.

As we find that there has been gross negligence on the part of the respondents and other concerned officers, we are of the view that compensation of Rs. 10,000/- should be granted to the petitioner.

Hence the following order:-

ORDER

- i. The impugned order is set aside.
- ii. The respondents are directed to release the petitioner on parole leave for thirty days, on such conditions as shall be imposed by the competent authority.
- iii. State of Maharashtra shall pay an amount of Rs.10,000/- (Rupees Ten Thousand Only) to the petitioner towards compensation. The State of Maharashtra will be at liberty to recover the amount of compensation from the erring Officer/Officers after conducting enquiry against such Officer/Officers.
- iv. The amount of compensation shall be paid to the petitioner within two months and affidavit of compliance shall be filed by the respondent No.2 on record of this

petition.

Rule is made absolute in the above terms.

v. Fees be paid as per the rules to Ms. Laximi Y. Malewar, Advocate appointed to represent the petitioner.