

(2019) 09 BOM CK 0032

In the Bombay High Court

Case No : Criminal Writ Petition No. 1046 Of 2018

Kantilal Nandlal Jaiswal

APPELLANT

Vs

Divisional Commissioner And Anr

RESPONDENT

Date of Decision : 13-09-2019

Acts Referred:

Prisons Act, 1894 — Section 59(5)

Indian Penal Code, 1860 — Section 148, 149, 224, 302, 449

Code Of Criminal Procedure, 1973 — Section 82, 83

Prisons (Bombay Furlough And Parole) Rules, 1959 — Rule 1(A), 1(A)(A), 1(A)(d), 2(A), 4, 19, 19(1), 19(2), 19(2)(A), 19(2)(B), 19(2)(C), 19(2)(A)(i), 19(2)(A)(ii), 20, 23, 24, 24A

Constitution Of India, 1950 — Article 14, 19, 19(2), 21

Citation : (2019) 09 BOM CK 0032

Hon'ble Judges : P.N. Deshmukh, J; Manish Pitale, J; Pushpa V. Ganediwala, J

Bench : Full Bench

Advocate : Sunil V. Manohar, Adwait S. Manohar, Sonali Khobragade, S.Y. Deopujari, M.J. Khan

Final Decision : Disposal Off

Judgement

Manish Pitale, J

1. By order dated 14.03.2019, a Division Bench of this Court framed two questions pertaining to the nature of right of grant of parole to a convicted accused and as to whether proviso introduced to Rule 19(2) of the Prisons (Bombay Furlough and Parole) Rules, 1959, violates Articles 14 and 21 of the Constitution of India. The reference was occasioned because the said Division Bench of this Court found that validity of such a proviso upheld by an earlier judgment of a Division Bench of this Court was required to be reconsidered, in the light of specific contentions raised on behalf of the petitioner in the context of Articles 14 and 21 of the Constitution of India and also because certain new and distinguishing circumstances had arisen after the said earlier judgment of the Division Bench of this Court in the case of Gajanan Babulal Bathulwar .vs. State

of Maharashtra and others reported in 2014(2) Bom. CR (Cri) 544.

2. The specific questions referred to the larger Bench read as follows:-

(i) Whether parole is a right or a concession offered by the State or a mere administrative decision of the State dictated by its administrative policy or a special right of a prisoner in special circumstances or something else?

(ii) Whether proviso to Rule 19(2) introduced in terms of notification dated 16th April, 2019 is violative of Article 14 and Article 21 of the Constitution of India and if yes, what treatment must it be given ?

3. The aforesaid rules pertaining to furlough and parole were framed under Section 59(5) of the Prisons Act, 1894 as applicable to the State of Maharashtra. The aforesaid section 59(5) of the Prisons Act, 1894 reads as follows:-

"59. Power to make rules:-

(5) for the award of marks, the suspension, or remission and consent shortening of sentences, and the grant of release on parole or furlough and determining the conditions on which and the authority by which the sentences may be suspended or remitted and the prisoners may be released on parole or furlough.- Bombay Act 23 of 1959, S.3 (w.e.f. 1-6-1959)."

4. The said Rules pertaining to furlough and parole framed in the year 1959 (hereinafter referred to as "the Act and Rules of 1959") and a perusal of the manner in which the said Rules were amended from time to time shows that the proviso, validity of which has been called into question, was first inserted in the said Rules on 28.11.1989. Thereafter, it stood deleted on 07.02.2007. It was again added on 23.02.2012. It is at this stage that validity of the said proviso was challenged before this Court, but its validity was upheld in the aforesaid judgment by a Division Bench of this Court in the case of Gajanan Babulal Bathulwar .vs. State of Maharashtra and others (supra). Thereafter, on 26.08.2016, the said proviso again stood deleted. Lastly, on 16.04.2018, the said proviso was again added to Rule 19(2) of the Rules of 1959. It is still in operation and the same has been challenged in the present writ petition. It is relevant that the last amendment dated 16.04.2018, whereby the proviso stood reinserted in the aforesaid Rules, Rule 1(A) was also inserted in the Rules of 1959, enumerating the objectives for furlough and parole rules. There were other amendments also carried out in the Rules of 1959 by the said amendment on 16.04.2018, reference to which shall be made at appropriate place in this judgment.

5. In order to appreciate the nature of challenge raised in the present writ petition, it would be appropriate to quote at this stage Rules 1(A) and 19 of the Rules of 1959. The said Rules read as follows:-

"1(A). Objectives:-

Furlough and Parole leaves to inmates are progressive measures of correctional

services. The objectives of releasing a prisoner on leave are:-

- (a) To enable the inmate to maintain continuity with his family life and deal with family matters,
- (b) To save him from evil effects of continuous prison life,
- (c) To enable him to maintain and develop his self-confidence,
- (d) To enable him to develop constructive hope and active interest in life."

"19. When a prisoner may be released on emergency parole:-(1) Emergency Parole-

(A) All convicted prisoners except foreigner and death sentenced prisoners may be eligible for emergency parole for 14 days for death of parental grandfather or grandmother /father / mother /spouse /son/daughter/brother/sister and marriage of son/daughter/ brother /sister, provided that no extension can be granted to emergency parole.

(B) Emergency Parole may be granted by the Superintendent of Prison for the reason of death of parental grandfather or grandmother/ father /mother/ spouse/ son/ daughter/ brother/ sister and by concerned Dy. I.G. for the reason of marriage of son / daughter/ brother/ sister and the Authority approving emergency Parole shall decide whether to grant parole under police escort or with a condition to report daily to the local police station depending upon the crime committed by the prisoner and his conduct during his stay. The expenses of police escort will be borne by the prisoner himself prior to his release on parole.

(2) Regular Parole -

All the prisoners eligible for furlough shall be eligible for regular parole for following reasons:-

- a. Serious illness of father/ mother/ spouse/ son/ daughter.
- b. Delivery of wife (except high security risk prisoners).
- c. In case of natural calamities such as house collapse, flood, fire, earthquake, etc.

Provided that, a prisoner shall not be released on emergency or regular parole for the period of one year after the expiry of his last emergency or regular parole except in case of death of his nearest relatives mentioned above.

In case of Regular Parole, eligibility and limits of parole days will be as follow:-

- (A) When average sentence of prisoner is not exceeding 5 years,
- (i) Prisoner may be considered for first release on regular parole after completion of one year of imprisonment counted from the date of admission to prison under

convicted crime, provided six months have been passed from his last furlough.

(ii) Prisoner shall be eligible for subsequent release on regular parole after completion of six months of actual imprisonment to be counted from his last return either from furlough or regular parole.

(iii) Prisoner shall be eligible for maximum of 45 days of parole in a year which can be extended up to 60 days once in three years only under exceptional circumstances.

(B) When average sentence of prisoner exceeds 5 years but not more than 14 years,

(i) Prisoner may be considered for first release on regular parole after completion of two years of imprisonment counted from the date of admission to prison under convicted crime provided six months have been passed from his last furlough.

(ii) Prisoner shall be eligible for next release on regular parole 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.

(iii) Prisoner shall be eligible for maximum of 45 days of parole in a year which can be extended upto 60 days once in three years only under exceptional circumstances.

(C) When prisoner is sentenced to life or whose average sentence exceeds 14 years,

(i) Prisoner may be considered for first release on regular parole after completion of three years of imprisonment counted from the date of admission to prison under convicted crime provided six months have been passed from his last furlough.

(ii) Prisoner shall be eligible for next release on regular parole 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.

(iii) Prisoner shall be eligible for maximum of 45 days of parole in a year which can be extended up to 60 days once in three years only under exceptional circumstances."

6. The brief facts relevant for appreciating the challenge raised by the petitioner in the present case are that the petitioner is undergoing sentence of life imprisonment for offences punishable under Sections 302, 148, 149 and 449 of the Indian Penal Code. At the time when the writ petition was filed in 2018, the petitioner had undergone about 10 years of sentence. There is no dispute about the fact that the appeals filed by the petitioner against his conviction and sentence were dismissed and, therefore, the order convicting and sentencing him

has attained finality. It is the case of the petitioner that his application for grant of parole was rejected by the competent authority, only for the reason that period of one year had not elapsed from the last occasion on which he was granted parole. It is in this context that a challenge has been raised to the aforesaid proviso to Rule 19(2) of the Rules of 1959, contending that limiting grant of regular parole to a convict within one year of expiry of his last emergency or regular parole to case of death of his nearest relatives, was wholly arbitrary and it ran counter to the very objectives specifically inserted by Rule 1(A) of the Rules of 1959 by amendment of the Rules on 16.04.2018. It was submitted that such an arbitrary condition not only violates Article 14 but also Article 21 of the Constitution of India and that, therefore, it was liable to be quashed as being ultra vires the Constitution of India.

7. Upon notice being issued in the writ petition, the respondents justified the order rejecting grant of parole to the petitioner by relying upon proviso to Rule 19(2) of the Rules of 1959 and the aforesaid judgment of Division Bench of this Court in the case of Gajanan Babulal Bathulwar .vs. State of Maharashtra and others (supra), wherein constitutional validity of identical proviso had been upheld by this Court. It was claimed that when validity of an identical proviso found in the Rules, as introduced in the year 2012, had been upheld, there was no occasion to entertain a similar challenge at the behest of the petitioner.

8. But, in the referral order, the Division Bench of this Court took note of the change in circumstances, as also the specific challenge raised on behalf of the petitioner in this writ petition, in the context of Articles 14 and 21 of the Constitution of India and thereupon it was observed as follows:-

"25. Following such line of reasoning, it was held in Gajanan that the proviso introduced to Rule 19 by notification dated 23.2.2012 could not be stated to be resulting in breach of the provisions of Article 21 of the Constitution of India and, therefore, the challenge was rejected. But, now the challenge made has a new context provided by avowed objectives, new circumstances created by change in stand of the Government twice and new perspective provided by a question raised over unequal treatment and ignorance of right to lead life with dignity falling within the purview of Articles 14 and 21. All these factors were not present when validity of 2012 rule was upheld in Gajanan. These are the distinguishing circumstances and grounds which in our opinion would require reconsideration of Gajanan and these are the very factors also which have made us arrive at an opinion which we have expressed in the previous paragraphs. So the judicial discipline would make us believe that it is necessary that the issue involved herein deserves to be referred to a larger Bench for its resolution finally.

26. Of course, in the case of Satish Shankarrao Shinde (supra) another Division Bench of this Court at Aurangabad has found no substance in the challenge made to the vires sub Rule (2a) of Rule 19. In our respectful submission, the decision having been based upon a challenge made in general terms and making no reference to the manifest objectives contained in Rule 1(A), would also require

reconsideration by a larger Bench.

27. Then there is another dimension involved in the matter. In the case of Pralhad Gajbhiye it has been held by the Division Bench of this Court that while furlough is a matter of right, parole cannot be claimed as a matter of right. If parole cannot be claimed as a matter of right then it would be also necessary for us to know as to what is the basic characteristic of "parole". Whether it is a concession offered by the State or merely an administrative action of the State taken as per the extant administrative policy? If it is none of this, especially when examined in the light of the objectives stated in Rule 1(A) and right of a prisoner to led life with dignity, could it be still categorised as a special right given to prisoner in special circumstances ? In our view, answer to this paradox is required."

9. In this backdrop, the aforesaid two questions were framed by the Division Bench and they were referred to a larger Bench for consideration.

10. Mr. Sunil V. Manohar, learned senior counsel appearing with advocates Mr. A.S. Manohar and Ms. Sonali Khobragade, raised the following contentions on behalf of the petitioner.

a) In our jurisprudence and judgments passed by the Hon'ble Supreme Court of India, it has been recognized as an accepted position of law that convicts and prisoners are not completely denuded of their fundamental rights. Although they stand incarcerated by procedure established by law and to that extent their freedom stands curtailed, their right to be treated with dignity and in a non-arbitrary manner, remains protected under Articles 14 and 21 of the Constitution of India.

b) Although grant of parole cannot be raised to the level of a fundamental right, it is certainly a right available to a convict and prisoner in terms of the Rules of 1959 framed under the Prisons Act, 1894. The said procedure for grant of parole ought to adhere to the requirements of Articles 14 and 21 of the Constitution of India, in the light of series of judgments of the Hon'ble Supreme Court of India and various High Courts.

c) Once grant of parole is conceded as a rehabilitative and correctional procedure for inmates to maintain continuity of life with their family and other such matters, the rules governing such grant of parole cannot be arbitrary and they need to necessarily conform with requirements of Articles 14, 19 and 21 of the Constitution of India.

d) By the amendment in the Rules of 1959 carried out on 16.04.2018, Rule 1(A) was specifically added which enumerates the objectives for granting furlough and parole leaves to inmates as progressive measures of correctional services. Thus, rules governing the grant of parole must necessarily carry forward such objectives and they cannot be operated in a manner against the very objectives.

e) When the proviso to Rule 19(2) is analysed in the context of the above

contentions, it becomes clear that it is found to be arbitrary not only because it fails the classic test of classification and rational nexus with the object of classification but because it is per se manifestly arbitrary.

f) In the case of *Gajanan Babulal Bathulwar .vs. State of Maharashtra and others* (supra) when a Division Bench of this Court upheld the validity of an identical proviso to Rule 19(2) of the Rules, no contention was raised before the said Division Bench pertaining to Article 14 of the Constitution of India and the arbitrariness of the said proviso. It was also not brought to the notice of the Division Bench that on that score the proviso was rendered unconstitutional.

g) The respondents have wrongly sought to justify insertion of the said proviso on the basis that there had been rampant misuse of the facility of parole, particularly because false and fake medical certificates regarding serious illness of close relatives, were produced and undeserving inmates were granted parole, who some times absconded. It was submitted that the failure of the respondents in properly examining and allowing the applications for parole whereby there was rampant misuse, could not be used as an excuse to introduce the aforesaid proviso.

11. Mr. S.Y. Deopujari, learned Public Prosecutor along with Mr. M.J. Khan, learned Additional Public Prosecutor, appearing for the respondents (Authorities of the State), submitted as follows:-

i) The aforementioned judgment of Division Bench of this Court in the case of *Gajanan Babulal Bathulwar .vs. State of Maharashtra and others* (supra) had considered all the aspects of challenge to constitutional validity of identical proviso to Rule 19(2) of the Rules of 1959 and that there was no occasion for reference to a larger Bench in the present case.

ii) It was submitted that the change in circumstances made the basis by subsequent Division Bench to refer the said questions to a larger Bench, was erroneous because introduction of Rule 1(A) and specifying objectives in the Rules of 1959 could not be said to be a change in circumstances as the very objectives were noted in Full Bench judgment of the Gujarat High Court in the case of *Bhikhabhai Devshi .vs. State of Gujarat* reported in AIR 1987 Gujarat 136, which had been the basis of the facility of parole granted in the Rules of 1959.

iii) It was pointed out that the validity of this very proviso to Rule 19(2) of the Rules of 1959, as brought into existence by amendment dated 16.04.2018, had been already considered in two Division Bench judgments of this Court in Criminal Writ Petition No. 624 of 2019 (*Kalyan Bansidharrao Renge .vs. State of Maharashtra*) and Criminal Writ Petition No. 507 of 2019 (*Sikandar @ Raju s/o Wajir Inamdar .vs. State of Maharashtra*) and that, therefore, there was no need for reference to a larger Bench.

iv) The facility of parole was nothing but an administrative action as recognized

in Full Bench judgment of this Court in the case of S. Sant Singh .vs. Secretary, Home Department, Government of Maharashtra reported in 2006 Cri.L.J. 1515 and that, therefore, the first question in referral order stands already answered by the said Full Bench judgment.

v) A Division Bench of this Court in the case of Amit Gajanan Gandhi .vs. State of Maharashtra reported in 2014 ALL.MR (Cri) 2132, while considering the Rules of 1959 and rampant misuse thereof, had in fact found that grant of such parole annually to criminals and inmates was causing grave inconvenience to the relatives and friends of victims and witnesses and, therefore, considering over all degradation of the moral standard in the society, the authorities were expected to bring relevant changes in the Rules of 1959 for restoration of faith of the people. On this basis, it was submitted that the existing Rules of 1959 were found to be liberal and lenient, which perhaps required reconsideration, thereby indicating that there was no substance in the contention raised on behalf of the petitioner in the present writ petition.

vi) The reliance placed on judgments of the Hon'ble Supreme Court and this Court by the learned counsel for the petitioner while challenging validity of proviso to Rule 19(2) of the Rules of 1959, was misplaced because the said judgments pertained to treatment to convicts and inmates within the four walls of the jail with dignity and humaneness with particular reference to the quality of food and other such aspects. It was submitted that the said judgments would not apply to the present case, because it concerns the question of parole, which necessarily required the State to balance the needs of the individual with those of the society at large. It was submitted that since the Courts had convicted the petitioner and his sentence had been upheld, the manner in which parole was to be granted, was completely in the sphere of the operation of the State and that, therefore, the challenge raised in the writ petition was liable to be rejected.

vii) It was submitted that the contention regarding proviso to Rule 19(2) of the Rules of 1959, being violative of Article 14 of the Constitution of India, as it failed the classification test and that it was manifestly arbitrary, was wholly misplaced because there was always a presumption in favour of constitutionality of a rule framed in accordance with the provisions of law and that while framing such rules, specific requirements of conditions applicable to a class of persons could be taken into consideration for treating them differently.

12. Mr. Amit Kinkhede, Advocate also assisted this Court by filing written notes of arguments and placing on record relevant judgments for appreciation of the rival contentions raised in this writ petition.

13. Heard the learned counsel for the rival parties. The evolution of jurisprudence in our system in the context of the rights available to convicts and inmates demonstrates that an effort has been made to balance all the aspects of punishing a convict, which requires adoption of an approach that ensures deterrence, prevention, retribution and reformation. While the convict is required

to be punished and thereby kept away from society, by keeping him/her behind bars, thereby curtailing the fundamental right guaranteed under Article 21 of the Constitution of India, as per procedure established by law, efforts are also required to be made by the criminal justice system to treat such convicts with dignity and humaneness, with the objective that once the period of incarceration is over, such convicts are able to come back into society and assimilate themselves in such a manner that they are not inclined towards further criminal activities. As far back as in 1978, in the case of *Sunil Batra .vs. Delhi Administration and others* reported in (1978) 4 S.C.C. 494, popularly known as the *Sunil Batra-I* case, a Constitution Bench of the Hon'ble Supreme Court, in the context of availability of fundamental rights to convicts and prisoners held as follows:-

"52. True, our Constitution has no 'due process' clause or the VIII Amendment; but, in this branch of law, after *Cooper* and *Maneka Gandhi*, the consequence is the same. For what is punitively outrageous scandalizingly unusual or cruel and rehabilitatively counter-productive, is unarguably unreasonable and arbitrary and is shot down by Articles 14 and 19 and if inflicted with procedural unfairness, falls foul of Article 21. Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authority. Is a person under death sentence or undertrial unilaterally dubbed dangerous liable to suffer extra torment too deep for tears ? Emphatically no, lest social justice, dignity of the individual, equality before the law, procedure established by law and the seven lamps of freedom (Article 19) become chimerical constitutional claptrap. Judges, even within a prison setting, are the real, though restricted, ombudsmen empowered to proscribe and prescribe, humanize and civilize the life-style within the carcens. The operation of Articles 14, 19 and 21 may be pared down for a prisoner but not puffed out altogether. For example, public addresses by prisoners may be put down but talking to fellow prisoners cannot. Vows of silence or taboos on writing poetry or drawing cartoons are violative of Article 19. So also, locomotion may be limited by the needs of imprisonment but binding hand and foot, with hoops of steel, every man or woman sentenced for a term is doing violence to Part III. So *Batra* pleads that until decapitation he is human and so should not be scotched in mind by draconian cellular insultation nor stripped of the basic fellowship which keeps the spirit flickering before being extinguished by the swinging rope."

14. The said position of law was followed in the case of *Sunil Batra .vs. Delhi Administration* reported (1980) 3 S.C.C. 488, popularly known as *Sunil Batra-II* case, wherein it was reiterated that treatment to a prisoner must satisfy the test of Articles 14, 19 and 21 of the Constitution of India. Although the said judgments pertained more to the manner of treatment to be meted out to convicts and prisoners inside the four walls of jails, the principles laid down therein are relevant even for the manner in which such convicts are to be treated in the context of grant of furlough and parole, since the avowed objectives of

furlough and parole leaves are that they are progressive measures of correctional services meant for ensuring that such convicts and prisoners are treated with a human touch, so that they are able to maintain continuity of their family life and that they are saved from evil effects of continuous prison life.

15. In this context, judgment of the Hon'ble Supreme court in the case of Asfaq .vs. State of Rajasthan and others reported in (2017) 15 S.C.C. 55, assumes significance because the said judgment specifically pertains to grant or rejection of parole. In the said judgment, the Hon'ble Supreme Court has discussed various aspects of the nature of right of grant of furlough and parole, appreciating the distinction between the two. It has been analysed in the said judgment as to the manner in which the requirement of treating individual convicts and prisoners with dignity in the context of grant or refusal of parole, can be balanced with the requirement of the society that convicts and criminals are not let loose in the society, thereby increasing incidents of crime. Since the discussion in the said judgment of the Hon'ble Supreme Court is relevant for both the questions referred for consideration, it is necessary to quote relevant portions of the said judgment of the Hon'ble Supreme Court in the case of Asfaq .vs. State of Rajasthan (supra). The relevant paragraphs read as follows:-

"18. The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.

19. Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become a threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a

crime or he is showing tendency to reform himself to become a good citizen.

20. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that they aspire to live as law-abiding citizens. Thus, parole program should be used as a tool to shape such adjustments.

21. To sum up, in introducing penal reforms, the State that runs the administration on behalf of the society and for the benefit of the society at large cannot be unmindful of safeguarding the legitimate rights of the citizens in regard to their security in the matters of life and liberty. It is for this reason that in introducing such reforms, the authorities cannot be oblivious of the obligation to the society to render it immune from those who are prone to criminal tendencies and have proved their susceptibility to indulge in criminal activities by being found guilty (by a Court) of having perpetrated a criminal act. One of the discernible purposes of imposing the penalty of imprisonment is to render the society immune from the criminal for a specified period. It is, therefore, understandable that while meting out humane treatment to the convicts, care has to be taken to ensure that kindness to the convicts does not result in cruelty to the society. Naturally enough, the authorities would be anxious to ensure that the convict who is released on furlough does not seize the opportunity to commit another crime when he is at large for the time being under the furlough leave granted to him by way of a measure of penal reform.

22. Another vital aspect that needs to be discussed is as to whether there can be any presumption that a person who is convicted of serious or heinous crime is to be, ipso facto, treated as a hardened criminal. Hardened criminal would be a person for whom it has become a habit or way of life and such a person would necessarily tend to commit crimes again and again. Obviously, if a person has committed a serious offence for which he is convicted, but at the same time it is also found that it is the only crime he has committed, he cannot be categorised as a hardened criminal. In his case consideration should be as to whether he is showing the signs to reform himself and become a good citizen or there are circumstances which would indicate that he has a tendency to commit the crime again or that he would be a threat to the society. Mere nature of the offence committed by him should not be a factor to deny the parole outrightly. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of offence for which he was sentenced. We may hasten to put a rider here, viz. in those cases where a person has been convicted for committing a serious offence, the competent authority, while examining such cases, can be well advised to have stricter standards in mind while judging their cases on the parameters of good conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquility etc.

23. There can be no cavil in saying that a society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and services and recourse made available to the prisoners. Being in a civilized society organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitute human dignity. For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. [See - Sunil Batra (2) v. State (UT of Delhi), Maneka Gandhi v. Union of India and Charles Sobraj v. Superintendent Central Jail.]

24. It is also to be kept in mind that by the time an application for parole is moved by a prisoner, he would have spent some time in the jail. During this period, various reformatory methods must have been applied. We can take judicial note of this fact, having regard to such reformation facilities available in modern jails. One would know by this time as to whether there is a habit of relapsing into crime in spite of having administered correctional treatment. This habit known as "recidivism" reflects the fact that the correctional therapy has not brought (sic any change) in the mind of the criminal. It also shows that criminal is hard core who is beyond correctional therapy. If the correctional therapy has not made in itself, in a particular case, such a case can be rejected on the aforesaid ground i.e. on its merits."

16. In this context, the first question needs to be answered, particularly in the backdrop of the assertions made on behalf of the respondents that grant of parole is nothing but an administrative action, as held by Full Bench of this Court in the case of S. Sant Singh .vs. Secretary, Home Department, Govt. of Maharashtra (supra). The nature of right in the context of parole has been stated by the respondents as being only a concession dictated by the administrative policy of the State and that the convict or prisoner cannot claim any right of parole. In order to examine the said contention raised on behalf of the State, it would be appropriate to trace the history of the concept of parole. In the case of Poonam Lata .vs. M.L. Wadhawan and others reported in (1987) 3 S.C.C. 347, the Hon'ble Supreme Court has taken note of the fact that historically parole was a concept known to military law and it pertained to release of prisoner of war on promise to return. It was noted that parole had become an integral part of the English and American jurisprudence with the passage of time and change in attitude of society towards crime and criminals. While earlier criminals were treated as persons who had lost all their rights once they stood convicted and were to be behind bars, with the evolution of criminal jurisprudence, various concepts developed for treating convicts and prisoners with a human touch. In the case of Dharambir .vs. State of U.P. reported in (1979) 3 S.C.C. 645, the Hon'ble Supreme Court, in the absence of specific rules for grant of parole, directed that the petitioners therein be permitted to go on parole for two weeks once a year, to be repeated through their period of incarceration, provided their

conduct while at large was found to be satisfactory, in order to facilitate humanising process of the petitioners therein.

17. A Full Bench of the Gujarat High Court in the case of Bhikhabai Devshi .vs. State of Gujarat (supra) specifically took into consideration objectives mentioned in the model prison manual, as per report submitted by the All India Jail Manual Committee, wherein it was specified that parole and furlough rules were part of penal and personal reform with a view to minimizing the evil effects of prison system and particularly to enable the inmates to maintain continuity with family life and further to develop constructive hope and active interest in life, so that evil effects of continuous prison life were reduced.

18. In fact, the said objectives taken note of in the aforesaid Full Bench judgment of the Gujarat High Court, have now found crystallization in the form of introduction of Rule 1(A) in the Rules of 1959 of the State of Maharashtra, introduced by the amendment dated 16.04.2018, which interestingly reinserted the aforesaid proviso to Rule 19(2) of the Rules of 1959. The said Rule 1(A) pertaining to objectives of furlough and parole leaves have been quoted above and now the avowed objectives of the facility of furlough and parole have been formalized and stated at the outset in the Rules of 1959.

19. This clearly shows that the State itself has emphasized on the aspect of rehabilitation, continuity of life and constructive hope for convicts and prisoners and for their reformation, even while they are undergoing incarceration. This would show that even if the Full Bench judgment of this Court in the case of S. Sant Singh .vs. Secretary, Home Department, Govt. of Maharashtra (supra) has held that parole is generally speaking an administrative action, it cannot be termed only as a concession given by the State to convicts and prisoners, which could be withdrawn at will or that the procedure governing the operation of such concession could escape the requirement of being non-arbitrary. In the light of the framing of Rules of 1959 and insertion of Rule 1(A) as the objectives clause in the said Rules, grant of parole to a convict or prisoner has certainly become a limited right available to the convict or prisoner in order to satisfy the objectives specifically laid down in the Rule 1(A) of the Rules of 1959 and once the circumstances specified in the rules exist, the convict or prisoner cannot be deprived of such a limited right for grant of parole.

20. The contention raised strongly on behalf of the respondents that it has been repeatedly held that furlough could be said to be a right but not parole and that the interest of the society needs to be taken into consideration before elevating parole to the status of a right, is answered by Rule 1(A) of the Rules of 1959 itself, read with other provisions in the said Rules, which ensure that the convict or prisoner would not be able to misuse the facility of parole and that the concerns of the society at large are clearly taken care of by the operation of various rules of the Rules of 1959.

21. In this context, it is necessary to appreciate as to when a convict or a

prisoner may be released on emergency or regular parole. Rule 19(2) pertaining to regular parole clearly states that the prisoners eligible for furlough shall be eligible for regular parole for three reasons specified therein. Eligibility for furlough is specified in Rule 4 of the said Rules, which was substituted by very same amendment dated 16.04.2018, specifying that Indian prisoners whose annual conduct reports are good would be eligible for furlough except 21 categories of prisoners stated in the said Rule who would not be eligible. A perusal of the said 21 categories would show that the said rule does not extend eligibility for furlough to prisoners who have at any time escaped or attempted to escape the lawful custody or they have defaulted in any manner in surrendering at the appropriate time after release on parole or furlough, prisoners who are dangerous or prejudicial to public peace and order, prisoners who are sentenced to death, prisoners who are sentenced for offences pertaining to terrorist crimes, kidnapping for ransom, mutiny against State, prisoners suffering from mental illness and other such detailed categories. Thus, there is an extensive filter in the form of Rule 19(2) read with Rule 4 of the Rules of 1959, pertaining to eligibility for grant of regular parole, because eligibility for grant of regular parole is limited to those prisoners who under Rule 4 of the Rules of 1959 are eligible for furlough.

22. Apart from this, Rule 19(2) itself provides, depending upon the duration of sentence, as to when the prisoner can be considered for first release on regular parole and subsequent releases after specified periods of incarceration have expired, after the last release on parole. Rule 20 specifies that parole has not to be counted as remission of sentence. Rule 23 specifies the enquiries required to be made by the competent authority while considering an application for parole and the requirement for obtaining police enquiry report in that context. Rule 24 requires the competent authority to ensure that the prisoner applying for parole executes surety bonds and personal bonds in forms specified in the rules. Proviso to Rule 24 requires the prisoner to report to the nearest Police Station as a condition for grant of parole. Rule 24-A lays down the requirement of surety bond and deposits to be made by the prisoner, further specifying that in case the prisoner does not surrender on the due date, the amount of deposit shall be forfeited and case under Section 224 of the IPC would be registered and further that the procedure under Sections 82 and 83 of the Cr.P.C. would be initiated. Rule 24-A also requires the prisoner on parole to give a declaration and undertaking.

23. Thus, the Rules of 1959 extensively provide for a regimen where only deserving prisoners who have shown good conduct in and outside the jail are considered for grant of parole. With such a mechanism provided by the Rules of 1959, the objectives specifically stated in Rule 1(A) of the Rules of 1959, can be achieved and in that context the content and texture of the facility of parole, being a right or otherwise, needs to be analysed. On an analysis of the aforesaid Rules of 1959, it becomes clear that although the decision of grant of parole may be classified as having an administrative flavour, the manner in which such a decision is to be arrived at and the objectives for which parole is to be granted,

shows that within the procedure and safeguards provided in the Rules of 1959, the convict or prisoner does have a limited right for grant of parole and that the discretion for grant of parole vested in the State is hemmed in by the procedure specified in the Rules of 1959, which are meant for achieving the objectives stated in Rule 1(A) of the said Rules.

24. Therefore, question (i) referred to this Bench is answered by holding that parole is not a mere administrative decision dictated only by the administrative policy of the State but it is a limited legal right available to the convict or prisoner subject to satisfaction of the requirements specified in the Rules of 1959 for grant of parole, with the avowed objectives to be achieved as specified in Rule 1(A) of the said Rules.

25. As regards the second question regarding validity of proviso to Rule 19(2) of the Rules of 1959, the respondents have emphasized that the said question did not require any reference to a larger Bench because the earlier Division Bench judgment in the case of *Gajanan Babulal Bathulwar .vs. State of Maharashtra and others* (supra) has already upheld the constitutional validity of an identical proviso. But, a perusal of judgment in the case of *Gajanan Babulal Bathulwar .vs. State of Maharashtra and others* (supra) shows that submissions were made before the Division Bench of this Court regarding the validity of an identical proviso, only in the context of Article 21 of the Constitution of India. The entire emphasis in the said judgment was on the question as to whether introduction of such a proviso infringed fundamental right of the convict or prisoner enshrined in Article 21 of the Constitution of India. It was held by the Division Bench that release on parole was not an absolute right and since there had been misuse of the facility of parole, the State was well within its right to curb such misuse by introducing such a proviso in the Rules. But, nowhere in the said judgment is any discussion on the aspect as to whether such a proviso violates Article 14 of the Constitution of India, because it created a class within a class of persons and such classification could not be said to be based on an intelligible differentia and that in any case the basis of such classification had no rational nexus to the object sought to be achieved. There was also no submission made on manifest arbitrariness of the proviso. Therefore, there is no substance in the contention raised on behalf of the respondents that the second question did not deserve consideration in view of the earlier judgment of the Division Bench of this Court in the case of *Gajanan Babulal Bathulwar .vs. State of Maharashtra and others* (supra).

26. In the challenge raised in the present writ petition, particularly in the context of Article 14 of the Constitution of India, it needs to be examined as to whether the petitioner is justified in contending that the proviso to Rule 19(2) of the Rules of 1959 violates Article 14 of the Constitution of India because it fails the classification test and also because it is per se manifestly arbitrary in its operation.

27. The learned Public Prosecutor relied upon judgment of the Hon'ble Supreme

Court in the case of Shri Ram Krishna Dalmia .vs. Shri Justice S.R. Tendolkar reported in AIR 1958 S.C. 538 wherein the twin conditions of permissible classification have been laid down and it was emphasized that the Hon'ble Supreme Court in the said judgment had laid down that presumption operated in favour of constitutionality of an enactment and the burden was upon those who attacked it to show that there was transgression of constitutional principles. It was emphasized that the Hon'ble Supreme Court had laid down that the Legislature was free to recognize various degrees of harm and to confine restrictions to those cases where the need was deemed to be clearest. On this basis, it was contended that the classic twin conditions test for permissible classification was clearly passed by the said proviso to Rule 19(2) of the Rules of 1959 and that there was no substance in the contention raised on behalf of the petitioner.

28. In this context, it needs to be examined as to whether the aforesaid proviso provides for classification of convicts or prisoners into two classes on the basis of intelligible differentia, which has rational nexus to the object of such classification. The said proviso creates a class of prisoners who shall not be released on either emergency or regular parole for a period of one year after expiry of their last emergency or regular parole, except in case of death of nearest relatives mentioned in Rule 19(1) of the Rules of 1959. Thus, such a class of prisoner is distinguished from those prisoners whose emergency or regular parole had expired more than one year earlier. The question is, whether such classification can be said to be based on an intelligible differentia and whether it can be said to have a rational nexus with the object of such classification. The objectives of parole leave are specifically stated in the above quoted Rule 1(A) of the Rules of 1959. Now such a classification obviously has nothing to do with the said objectives and, therefore, application of the said objectives to such classification would show that the classic twin conditions test is not satisfied.

29. In such a situation, the learned Public Prosecutor appearing for the respondents emphasized that the object sought to be achieved was to prevent misuse of the facility of parole. In order to buttress the said submission, the learned Public Prosecutor referred to a chart annexed to the reply filed on behalf of respondent no.2, to claim that number of prisoners had either failed to surrender after grant of parole or they had failed to report on the due date and that they had surrendered much later. It was contended that the statistics available with the State, as manifested in the chart at Annexure R-1 to the said reply, demonstrated rampant misuse of emergency and regular parole facility by prisoners and that, therefore, the object sought to be achieved by introduction of the proviso, was to curtail such misuse. The learned senior counsel appearing for the petitioner took us through the figures mentioned in the said chart and contended that a proper analysis of the same, would demonstrate that the claim of rampant misuse by prisoners of parole facility, was misplaced and not supported by the statistics on record. At this juncture, the learned Public

Prosecutor referred to a judgment of Division Bench of this Court in the case of Amit Gajanan Gandhi .vs. State of Maharashtra (supra) to contend that judicial notice of such rampant misuse had been taken by the Division Bench and it was suggested that stricter norms for grant of parole were the order of the day.

30. Apart from the fact that there is substance in the contention raised on behalf of the petitioner that the statistics placed on record, by way of the aforesaid chart on behalf of the respondents, do not really support the claim of rampant misuse of the parole facility by the prisoners, the contention regarding alleged misuse of the facility of parole by prisoners demonstrates that the State has conceded to the fact that applications for grant of parole have not been processed in a proper manner and in terms of the requirements of the Rules of 1959 referred to above, as a result of which large number of undeserving applications of prisoners have been granted. This only indicates the inefficiency and perhaps connivance of the officials of the respondents-State while processing and granting applications for parole. The misuse, if any, of the facility of parole, can only be prevalent when the State officials have failed to implement the Rules of 1959 in the strictest manner possible. The State cannot hide behind the possibility of misuse thereby conceding its inability to process the genuine from the non-genuine applications for parole and then to contend that for achieving the object of preventing misuse of facility of parole, it was free to introduce an additional fetter like the aforesaid proviso to Rule 19(2) of the Rules of 1959. This Court fails to understand how creating a class of prisoners who had been released on emergency or regular parole, within the past one year, from a wider class of prisoners and then to deprive them of the facility of parole, despite the fact that they satisfied the specific reasons for grant of such parole, could be said to be based on an intelligible differentia, in order to achieve the so called objective of preventing "rampant misuse" of the facility of parole. There can be no doubt about the fact that the said proviso to Rule 19(2) of the Rules of 1959 fails the said test and thereby violates Article 14 of the Constitution of India.

31. The contention of rampant misuse of parole facility by prisoners and that being a justification for introduction of proviso to Rule 19(2) of Rules of 1959, also needs to be examined in the backdrop of the above referred safeguards in various other Rules. In fact, Rule 19(2) (A) (B) and (C) of the said Rules itself specify that prisoners shall be eligible for maximum of 45 days parole in a year, which can be extended upto 60 days only once in three years and that too under exceptional circumstances. Thus, a prisoner cannot be roaming around free in society without any restrictions and the cap of 45 days in a year and 60 days once in three years applies. This completely negates the apprehension expressed on behalf of the respondents. In any case, upon any default by the prisoner during release on parole makes him/her ineligible for parole in the future. This further demonstrates the fallacy in the aforesaid contention raised on behalf respondents. If the objectives stated in Rule 1(A) of the Rules of 1959 and the law laid down by the Hon'ble Supreme Court in Asfaq .vs. State of Rajasthan (supra) regarding humane treatment of prisoners while addressing concerns of

the society, is to be followed, then the said proviso to Rule 19(2) of the Rules of 1959 cannot be sustained. The said Rules have necessary safeguards incorporated to take care of prisoners who attempt to misuse the facility of parole. In this context also the said proviso is rendered arbitrary and unsustainable.

32. Another incongruity that emerges in this context is that while under Rule 19 (2) (A) (i) and (ii) of the Rules of 1959, a prisoner can be considered and becomes eligible for parole after completion of six months of actual imprisonment to be counted from his last return either from furlough or regular parole, under the aforesaid proviso to Rule 19 (2), parole application of a particular class of prisoner cannot be considered till expiry of one year from his/her last emergency or regular parole, except in case of death of his/her nearest relative. This incongruity also hints at the arbitrary manner in which the State has introduced the said proviso, as it militates against the existing mechanism under the very same Rule. This aspect has been adverted to by Division Bench of this Court in the cases of Kalyan Bansidhar Rao Renge .vs. State of Maharashtra (supra) and Sikandar @ Raju s/o Wajir Inhamdar .vs. State of Maharashtra (supra) and it has been observed that upon completion of six months, the prisoner only becomes eligible under Rule 19 (2) (A) (i) and (ii) of the Rules of 1959, for parole but no vested right is created in him/her. True it is that a prisoner may not be able to claim a vested right but if he/she genuinely satisfies all the requirements of grant of regular parole, to deprive him/her of parole by creating a new class of prisoners under the said proviso to Rule 19 (2) of the Rules of 1959, is wholly arbitrary and falls foul of Article 14 of the Constitution of India. This aspect was not brought to the notice of the Division Bench of this Court in the said cases. Therefore, reliance placed on the same on behalf of the respondents does not take their case any further.

33. Another aspect of the said proviso is that within the aforesaid class of prisoners created by the proviso, an exception is carved out in cases of prisoners who apply for grant of parole in case of death of nearest relative. When the learned Public Prosecutor was questioned as to why an exception was carved out only in the case of death of nearest relative, it was submitted that while death was a certainty, the other reasons for grant of parole could not be said to be a certainty. It was submitted that occurrence of death was a certain event for which an exception was carved out and, therefore, it was sustainable.

34. A perusal of Rule 19(2) of the Rules of 1959 quoted above, shows that such a basis for creating an exception certainly had no nexus with the objectives for grant of parole leaves specified in Rule 1(A) of the Rules of 1959. If the objectives for grant of parole leave included under Rule 1(A)(a) to enable the inmate to maintain continuity with family life and under Rule 1(A)(d) to enable him/her to develop active interest in life, it is difficult to understand why the prisoner in whose case period of one year from grant of last emergency or regular parole has expired, cannot be released even when he has a genuine case

to show that either his father or mother or spouse or son or daughter is suffering from serious illness or that a natural calamity has occurred such as house collapse, flood, fire or earthquake. It appears to be highly insensitive and even cruel that a prisoner is to be told that since period of one year from the last emergency or regular parole has expired, he cannot be granted parole even if there is serious illness of close relatives or that a natural calamity has occurred, because such events are uncertain and he can be granted parole only if there is death, which is a certainty. In other words, a prisoner, just because the aforesaid period of one year is to expire, will not be able to see his/her close relatives during serious illness, even facing death, and also when a natural calamity occurs, but he would have to wait for death to occur for grant of parole. This runs absolutely counter to the said avowed objectives of the Rules of 1959, pertaining to grant of parole as specifically stated in Rules 1(A)(a) and (d) of the Rules of 1959. This indicates that apart from the classification test, the aforesaid proviso to Rule 19(2) of the Rules of 1959, is manifestly arbitrary, on the face of it.

35. In this context, the position of law enunciated in a recent judgment of the Hon'ble Supreme Court in the case of Navtej Singh Johar .vs. Union of India, reported in (2018) 10 S.C.C. 1

"409. Equating the content of equality with the reasonableness of a classification on which a law is based advances the cause of legal formalism. The problem with the classification test is that what constitutes a reasonable classification is reduced to a mere formula: the quest for an intelligible differentia and the rational nexus to the object sought to be achieved. In doing so, the test of classification risks elevating form over substance. The danger inherent in legal formalism lies in its inability to lay threadbare the values which guide the process of judging constitutional rights. Legal formalism buries the life-giving forces of the Constitution under a mere mantra. What it ignores is that Article 14 contains a powerful statement of values - of the substance of equality before the law and the equal protection of laws. To reduce it to a formal exercise of classification may miss the true value of equality as a safeguard against arbitrariness in State action. As our constitutional jurisprudence has evolved towards recognizing the substantive content of liberty and equality, the core of Article 14 has emerged out of the shadows of classification. Article 14 has a substantive content on which, together with liberty and dignity, the edifice of the Constitution is built. Simply put, in that avatar, it reflects the quest for ensuring fair treatment of the individual in every aspect of human endeavor and in every facet of human existence."

36. Applying the said test to the said proviso to Rule 19(2) of the Rules of 1959, would show that it can be termed to be nothing but manifestly arbitrary.

37. The contentions raised on behalf of the respondents go against the law laid down by the Hon'ble Supreme Court, specifically in the context of parole leaves, in the case of Asfaq vs. State of Rajasthan (supra). The respondents are not

justified in contending that Articles 14, 19 and 21 of the Constitution of India in their restricted form are available to prisoners only within four walls of the jail and they are available only in the context of quality of food and such other facilities inside jail. The objectives specified in Rule 1(A) of the Rules of 1959, as also the evolution of law pertaining to parole, noted by the Hon'ble Supreme Court in *Asfaq .vs. State of Rajasthan* (supra) shows that the prisoner does have a right to be treated with dignity and in a non-arbitrary manner even when his/her application for parole leave to come out of the four walls of the jail, is to be considered within the rigours of the mechanism laid down in the Rules of 1959. Introduction of the said proviso to Rule 19(2) of the Rules of 1959 goes against the grain of the said evolution of law, as also the very objectives encapsulated in Rule 1(A), thereby rendering it whimsical, arbitrary and hence unsustainable.

38. The respondents-State Authorities cannot be permitted to raise the bogey of misuse of the facility of parole to introduce such a proviso, which runs counter not only to the aforesaid objectives specified in Rule 1(A) of the said Rules, but it violates the rights available to convicts and prisoners under Articles 14, 19 and 21 of the Constitution of India, in the context of consideration of their applications for grant of parole. It is relevant to note that even in the judgment of *Amit Gajanan Gandhi .vs. State of Maharashtra* (supra) when the Division Bench of this Court referred to gross misuse and misutilisation of the provision of parole, it was specifically noted in paragraph 12 as follows:-

"12.This is a case of sheer casual approach and gross negligence on the part of authorities in dealing with the provision of parole."

39. Thus , viewed from any angle, the arbitrariness of the said proviso is evident and in that context reference made by the learned senior counsel for the petitioner to judgment of the Hon'ble Supreme Court in the case of *State of Madhya Pradesh .vs. Nandlal Jaiswal* reported in (1986) 4 S.C.C. 566 becomes relevant. In the said judgment, while acknowledging the fact no one could claim as against the State, a right to carry out a trade or business in liquor and the State could not be compelled to part with its exclusive right to do so, it was held that when the State decides to grant such right or privilege to others, the State cannot escape the rigour of Article 14 of the Constitution of India. Thus, even if facility of parole could be a policy of the State whereby it had conceded a limited right to the convict or prisoner within the four corners of the Rules of 1959, once such a limited right was conceded, the State was bound to operate such a procedure under the said Rules, in a non-arbitrary manner. The moment it is found that the insertion of proviso to Rule 19(2) of the Rules of 1959 is arbitrary and it violates Article 14 of the Constitution of India, it deserves to be struck down as being invalid and unconstitutional. The right of a convict or prisoner under Article 21 of the Constitution of India to be treated with dignity would also require the State to treat such prisoners and convicts in a non-arbitrary manner and not at its whims and fancies. Therefore, on the touchstone of both Article 14 and Article 21 of the Constitution of India, the aforesaid proviso to Rule 19(2) of

the Rules of 1959 is found to be ultra vires, unconstitutional and liable to be struck down.

40. This aspect was never brought to the notice of the Division Bench of this Court in the case of Gajanan Babulal Bathulwar .vs. State of Maharashtra and others (supra). At this juncture, it is relevant to observe that the repeated introduction and deletion of the said proviso to Rule 19(2) of the Rules of 1959, on the part of the State shows that even the State is not clear about its own policy. Such repeated somersaults in the State policy show the arbitrary manner in which the State has been treating prisoners and convicts in the State of Maharashtra. The dates noted above show that between 28.11.1989 and 06.02.2007, the proviso operated while between 07.02.2007 and 22.02.2012, it stood deleted, during which period the said limitation of period of one year did not apply to applications made by the convicts or prisoners for grant of parole. The proviso again stood added and operated when applications were considered for grant of parole between 23.02.2012 and 25.08.2016 , whereafter again it stood deleted and between the period 26.08.2016 and 15.04.2018, it did not apply. Thereafter, on 16.04.2018 the said proviso was again brought back in the Rules. The arbitrary approach of the State is manifested in the manner in which it has chosen to treat convicts and prisoners in the State of Maharashtra, in the context of grant or refusal of parole, at its own whims and fancies.

41. In view of the above, it is found that the proviso to Article 19(2) of the Rules of 1959 introduced in terms of Notification dated 16.04.2018 violates Article 14 and 21 of the Constitution of India and thereby question (ii) is answered against the State.

42. Accordingly, the said proviso to Rule 19(2) of the Rules of 1959 introduced in terms of Notification dated 16.04.2018 is struck down as violative of Articles 14 and 21 of the Constitution of India and it is found to be ultra vires even to the objectives stated in Rule 1(A) of the Rules of 1959.

43. The reference and the aforesaid two questions are answered in the above manner and the writ petition is directed to be placed before the appropriate Bench for disposal.