

(2012) 02 BOM CK 0177

In the Bombay High Court

Case No : Criminal Writ Petition No. 52 of 2012

Mahendra Digambarrao Deshmukh

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Citation : (2013) BomCR(Cri) 263

Hon'ble Judges : T.V. Nalawade, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : Priyanka U. Sawaji, for the Appellant; S.D. Kaldate, Additional Public Prosecutor, for the Respondent

Judgement

Naresh H. Patil, J.—Heard.

2. Rule made returnable forthwith. By consent heard finally.

3. The petitioner is a life convict presently lodged in Open Prison, Paithan. He applied for parole. The Divisional Commissioner Aurangabad released the petitioner on parole on 19th December 2011 for a period of one month. The petitioner was to surrender on or before 18th January 2012. As the petitioner found that, his daughter required immediate medical attention he applied for extension of parole for a period of further one month on 22nd December 2011. The application was sent to the office of the Divisional Commissioner by fax. It is submitted that, copy of the application was forwarded by the office of the Divisional Commissioner Aurangabad to the Superintendent of Police Amravati for calling police report. The application was forwarded by post on 23rd December 2011 and was sent by Fax on 25th December 2011.

4. It is submitted that the police forwarded the report to the office of the Divisional Commissioner Amravati on 4th February 2012 which reached the office of the Divisional Commissioner Aurangabad on 17th February 2012. However, the Divisional Commissioner passed the order on 23rd January 2012 rejecting the application of the petitioner on the ground that the police report did not reach

the Divisional Commissioner by 18th January 2012.

5. The learned counsel for the petitioner submits that, the delay occurred in forwarding the application from the office of the Divisional Commissioner Aurangabad to the Superintendent of Police and the receipt of the report from the Superintendent of Police to the Divisional Commissioner cannot be a ground for rejecting the application of the petitioner. The petitioner filed application promptly which was received by the office of the Divisional Commissioner on the same day. The petitioner's request ought not to have been rejected on the ground of delay on the part of the authorities in getting police report promptly and forwarding it to the appropriate authorities in time.

6. Affidavit-in-reply is filed by the respondent No. 4 through Pratapsing S/o Narayansing Daberao, Assistant Police Inspector, Local Crime Branch, Amravati (Rural). In paragraphs 3 and 5 the deponent contends thus:

3). I say that, the said letter has been received by the office of the Superintendent of Police, Amravati on 3-1-2012. The office of the Superintendent of Police, Amravati has forwarded the said letter to the Crime Branch on 6-1-2012 and thereafter the said crime branch has also forwarded the letter to the concern police station on 10-1-2012 i.e. Police Station, Pathrud.

5). I say that, after scrutiny of the police report, submitted by the police to the Local Crime Branch, the said report has been submitted before the Superintendent of Police, Amravati for scrutiny and order. After scrutiny of the said report, the Superintendent of Police, has submitted the report to the Divisional Commissioner, Aurangabad by letter dated 24-1-2012. Copy of the said letter dated 24-1-2012 is annexed herewith and marked as Exhibit R-1.

7. In the case of Prabhu Babu Chaware v. State of Maharashtra, 2008 (4) AIR Bom R. 563, the Division Bench, of which one of us ? Justice Naresh H Patil was a Member, has made observations for taking prompt action in respect of requests made by convicts for extension of parole. The Division Bench has observed in paragraphs 11,12 and 13 thus:-

11). We have noticed in some matters that certain delay has occurred in processing applications of prisoners in the matters of parole or furlough leave. We find that the concerned authorities shall devise appropriate mechanism to screen such applications effectively and diligently, so that the requests made by the prisoners are attended to within reasonable time frame. It is true that in certain cases minute inquiries are required to be made so that the purpose of law is not frustrated.

12). In the facts of this case, we are not inclined to award any damages to the petitioner, but certainly we would like the concerned Divisional Commissioners of the State to put into effect appropriate mechanism in the shape of orders and circulars, so that such incidents do not occur repeatedly and the applications filed by the prisoners are attended to at the earliest.

13. We observe that all the Divisional Commissioners and the Superintendents of Police in the State of Maharashtra, shall consider forwarding of the communication in this regard from the offices of the Divisional Commissioner to the Superintendent of Police and from Superintendent of Police to the Divisional Commissioner, on Fax, E-mail, etc., so that the stipulated time frame as envisaged in the circulars issued by the State Government through its Home Department is adhered to.

8. In spite of the same, we do find that delays are occurring in calling police reports and communications from the police authorities to the Divisional Commissionerates. In the result, purpose of the observations and directions of this Court is frustrated which causes lot of inconvenience to the convicts, increase in the litigations and possible tendencies of the convicts to overstay the leave period.

9. In the facts of the case, we are constrained to remand the matter back to the Divisional Commissioner Aurangabad for proper consideration of the matter and for passing fresh order in view of the peculiar factual background of this case.

10. The order dated 23-1-2012 passed by the Divisional Commissioner, Aurangabad rejecting the application of the petitioner for grant of extension of parole is quashed and set aside. The matter is remanded to the Divisional Commissioner, Aurangabad.

11. We direct the Divisional Commissioner to issue appropriate instructions in respect of dealing with applications for extension of leave, promptly, in future. We direct the Divisional Commissioner to pass appropriate orders on the application filed by the petitioner for extension of parole within two weeks from the date of receipt of the order of this Court.

12. We direct the Divisional Commissioner, Aurangabad and the Commissionerate of Police, Aurangabad to issue appropriate instructions in this regard in view of the observations made by us as above.

13. The Registry to forward a copy of this order to the Principal Secretary, Home Department, Government of Maharashtra, for issuing appropriate instructions in the light of the observations made by us in this order.

14. Rule is partly made absolute. The Secretary, High Court Legal Services Sub Committee Aurangabad to pay professional fees to the counsel as per rules.