
(2010) 01 BOM CK 0042

In the Bombay High Court

Case No : Criminal Writ Petition No. 1162 of 2009

Mohammed Parvez Zulfikar Qureshi

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 15-01-2010

Acts Referred:

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 19

Citation : (2010) 01 BOM CK 0042

Hon'ble Judges : Shrihari P. Davare, J;P.V. Hardas, J

Bench : Division Bench

Advocate : A.N. Ansari, for the Appellant; S.D. Kaldate, APP, for the Respondent

Judgement

Shrihari P. Davare, J.—Rule. Rule made returnable forthwith. By the consent of the learned Counsel for the parties, this petition is taken up for final hearing.

2. The subject matter of the present petition is challenge to the order dated 29.7.2009 passed by respondent No. 2 i.e. the Divisional Commissioner, Aurangabad, rejecting parole leave application of the petitioner and quashment thereof.

3. The petitioner herein is a convict of Bombay Bomb Blast case convicted by the Designated Court constituted under TADA (P) Act, 1987, by the judgment and order dated 5.6.2007 and is undergoing sentence of life imprisonment at Central Prison, Aurangabad.

4. The petitioner/convict applied for parole leave on the ground of his father's illness on 5.5.2009. However, the said application came to be rejected by an order dated 29.7.2009 passed by respondent No. 2 contending that the police report dated 25.6.2009 was adverse to the petitioner herein.

5. The petitioner states that the police posed apprehension that if the petitioner is released on parole leave, he would not return back to the jail on completion of the leave period. In the said context, the petitioner submits that he was earlier

released on furlough leave on 28.2.2009 and he surrendered himself within the prescribed time i.e. on 5.3.2009. The petitioner further states that during the pendency of the trial, he was released on temporary bail almost for 11 times since 1998 till 2006 and he surrendered himself to the jail authorities after the expiry of the said bail period. Hence, the petitioner submits that there is no substance in the apprehension posed by the police authorities, and therefore, the order passed by respondent No. 2 rejecting the application for parole leave of the petitioner deserves to be quashed and set aside.

6. The petitioner further submits that his father is admitted in Hinduja hospital for medical treatment of lung cancer, and therefore, the petitioner has prayed for his release on parole leave for the period of 3 months, so that he would look after his ailing father. The petitioner also contends that his application is within ambit of Rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959, and therefore, he is entitled to be released on parole leave as prayed for.

7. The respondents opposed the present application vehemently and filed the affidavit in reply, which is sworn in by Shri Natha Shankar Pardhi, presently working as Tahsildar in the office of the Divisional Commissioner, Aurangabad and denied the averments and contentions in the present petition unless specifically admitted therein. It is stated in the said affidavit in reply that the petitioner applied for the parole leave on the ground of illness of his father on 5.5.2009 and same was forwarded to the Assistant Commissioner of Police, Mahim Division, Mumbai for inquiry and report on 11.5.2009, who made the inquiry and sent the report to the Superintendent, Central Jail, Aurangabad, which was forwarded to respondent No. 2 by letter dated 14.7.2009. The said report disclosed that inquiry was made and statement of Sohail Zulfikar Qureshi, who is surety and brother of petitioner, was recorded and it is stated in the said report that the said convict is convicted for life imprisonment in the Bombay Blast case and it is not sure that he would return to concerned jail after completion of his leave period, and accordingly, the said report was adverse to the petitioner herein. It is also stated in the said affidavit in reply that basing upon the said police report, which is adverse to the petitioner herein, respondent No. 2 herein rightly rejected the application of the petitioner for parole leave vide order passed on 29.7.2009, which is under challenge in the present petition. It is also pointed out that the petitioner has not availed alternate remedy of appeal to the State Government as per Rules and directly filed the present petition before this court, which cannot be entertained.

8. Considering the rival submissions, at the out set, the application of the petitioner for parole leave preferred by him on 5.5.2009, is on the ground of ailment of his father i.e. lung cancer, and therefore, the said application is within the parameters of Rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959 and the petitioner has produced the medical case papers of Hinduja hospital to support the said contention, and therefore, there is no fault in the said application.

9. As regards the contention of respondent No. 2 that police report of the Assistant Commissioner of Police, Mahim Division, Mumbai is adverse to the petitioner, wherein apprehension was posed that the petitioner would not return to the jail after expiry of the parole leave period, and, therefore, raised objection for his release on parole, it is pertinent to note that the said police authorities have not produced any objective material to substantiate the said apprehension, and therefore, apparently there is no substance in the said apprehension.

10. Moreover, sight cannot be lost of the fact that the petitioner was released on temporary bail for about 11 times during the pendency of the trial from 1998 upto 2006 and he has surrendered himself to the jail authorities after the expiry of the said temporary bail period and chart thereof has been annexed by the petitioner at Exh. "B" (page 13) with the petition.

11. Besides that, it is also material to note that the petitioner was earlier released on furlough leave on 28.2.2009 and he surrendered himself to the prison authorities after the completion of the said furlough leave on 5.3.2009. Hence, in the light of the said matter, it is apparent that there is no substance in the apprehension posed in the alleged adverse police report and consequent rejection of the parole leave of the petitioner by the impugned order dated 29.7.2009 passed by respondent No. 2 herein, which deserves to be quashed and set aside and the petitioner is required to be released on parole leave as per the Rules and Regulations.

12. In the result, present petition succeeds and the order dated 29.7.2009, passed by respondent No. 2 i.e. the Divisional Commissioner, Aurangabad, rejecting the parole leave application dated 5.5.2009 preferred by the petitioner stands quashed and set aside and it is directed that the petitioner be released on parole leave for the period in accordance with law as per the Rules and Regulations forthwith. is made absolute in the above terms.