

**(2018) 05 BOM CK 0065**

**In the Bombay High Court**

**Case No : Stamp Number Main No. 1622 Of 2018**

Nagesh Gaonkar

APPELLANT

Vs

Inspector General of Prisons Government of Goa

RESPONDENT

**Date of Decision : 09-05-2018**

**Acts Referred:**

Goa Prisons Rules 2006 — Rule 324

**Citation : (2018) 05 BOM CK 0065**

**Hon'ble Judges : M. S. Sonak, J**

**Bench : Single Bench**

**Advocate : T. George John, Pravin Faldessai**

## **Judgement**

1. Heard Mr. T. George John, learned Counsel appearing for the Petitioner and Mr. Pravin Faldessai, learned Additional Public Prosecutor appearing

for the Respondents.

2. Rule.Â Rule is made returnable forthwith at the request and with the consent of the learned Counsel appearing for the parties.

3. The challenge in this Petition is to the Order dated 12.04.2018 made by the Inspector General of Prisons denying the Petitioner parole in terms of

the Goa Prisons Rules 2006.

4. Mr. T. George John, learned CounselÂ submits that the circumstances necessary for the release of the Petitioner on parole still exists.Â He

submits that unlike in the case of furlough, there is no bar to consideration application for parole, only on the ground that the Petitioner had availed

parole few months earlier.Â He submits that during the time when the Petitioner was released on parole, there was no untoward incident and there is

no allegation that the Petitioner breached the conditions subject to which he was

released on parole.Â Mr. T. George John therefore submits that this is a fit case where the Petitioner ought to be released on parole.

5. Mr. Faldessai, learned Addl. Public Prosecutor submits that there is a police report that the victim girl and her family members reside in the neighbouring Village and there is some possibility that the Petitioner may seek revenge.Â He further submits that the Petitioner had, in fact, been released on parole a short while ago and therefore it is impermissible to seek release on parole repeatedly for some reason.Â Despite of this, Mr.

Faldessai submits quite graciously that if the matter is remanded, the parole application can always be reconsidered.

6. On perusal of the record, in my judgment, it is not necessary to remand the matter.Â There does not appear to be any serious dispute with regard

to the ailments which the Petitioner's father suffers.Â The Petitioner was released on parole between 11.01.2018 and 09.02.2018 and at that time,

neither was any untoward incident reported nor it is the case of the Respondents that the Petitioner breached any terms and conditions subject to

which he was released on parole. Unlike in the case of furlough, there does not appear to be any legal bar to exercise powers under Rule 324 of the

Goa Prisons Rules which deal with the issue of release of the Petitioner on parole on the ground that the Petitioner was released on parole in January

2018.Â Furlough can be granted only once in six months. However, there is no such rule regards grant of parole.Â As long as the circumstances

necessary for grant of parole exist, the authorities have to exercise discretion one way or the other.Â The Authorities cannot refuse to exercise

discretion on the ground not provided for in the rules.

7. On cumulative consideration of all the aforesaid circumstances, the impugned Order dated 12.04.2018 is set aside.Â The competent authority

(Respondent No.1) is directed to release the Petitioner on parole subject to the usual terms and conditions.Â Necessary orders to this effect may be

made as expeditiously as possible in any case not later than two weeks from today.

8. Rule is made absolute in the aforesaid terms.Â

9. All concerned to act on the basis of an authenticated copy of this order.