
(2008) 02 BOM CK 0087
In the Bombay High Court
Case No : Criminal W.P. No. 720 of 2007

Prabhu Babu Chaware

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Citation : (2008) 4 MhLj 345

Hon'ble Judges : P.R. Borkar, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : S.P. Brahme, for the Appellant; S.K. Kaldate, Assistant Public Prosecutor, for the Respondent

Judgement

Naresh H. Patil, J.—Rule. Rule returnable forthwith.

2. The petitioner is a convict undergoing imprisonment in connection with Sessions Case No. 18 of 1984 decided on 10-5-1985 by the learned Additional Sessions Judge, Jalgaon.

3. Undisputed facts are that the petitioner applied for parole leave in writing by application dated 5-8-2006 addressed to the Divisional Commissioner, Aurangabad. The Divisional Commissioner, Aurangabad called for the report of concerned police by communication dated 14-8-2006. The report was submitted through the Superintendent of Police, Jalgaon on 26-9-2006. The police at that stage had certain reservations regarding release of the petitioner. They, in fact, objected to the release. The Divisional Commissioner thereafter called for another report by communication dated 10-10-2006. It is the case of the police that the report was submitted to the office of the Divisional Commissioner on 14-12-2006. Accordingly by order dated 27-8-2007 the Deputy Inspector General (Prisons) released the petitioner on parole on the ground of death of his mother who expired on 20-8-2007.

4. The petitioner's grievance is that the delay occasioned in processing his application is abnormal. The application was not considered diligently, due to

which the petitioner could not meet his ailing mother who expired prior to one week before his release.

5. The petitioner, therefore, seeks appropriate directions for taking action against the persons who were not diligent in processing the application filed by him. The petitioner seeks damages of Rs. 50,000/- from the respondents.

6. In response to the notice issued by this Court, respondent No. 2 has filed affidavit-in-reply through the Tahsildar (General Administration Department) in the office of the Divisional Commissioner, Aurangabad and respondent No. 3 has filed affidavit-in-reply through the Police Inspector, Shani Peth Police Station, Jalgaon. In substance, respondent No. 3-Superintendent of Police states that the second communication was forwarded to the office of the Divisional Commissioner on 14-12-2006 in respect of release of the petitioner on parole; whereas respondent No. 2-Divisional Commissioner states that the said report was not received from the office of respondent No. 3. Certain correspondence in this regard and an extract of the outward register of the office of the Superintendent of Police is annexed with the reply. Learned A.P.P. Shri Kaldade states that he has verified the original relevant extract of outward register maintained in the office of respondent No. 3.

7. From time to time concerned Department and the Court have directed the State and authorities for following certain prescribed procedure in processing applications filed by the prisoners for release on parole or furlough leave. There cannot be any dispute on the point that such applications are to be processed diligently and within stipulated time frame.

8. Our attention was invited to a Circular issued by the Additional Secretary, Home Department, Government of Maharashtra, Mantralaya, Mumbai, wherein it was indicated to the concerned authorities that applications for releasing prisoners on parole leave ought to have been decided within stipulated time frame. A copy of Court order passed in Criminal Writ Petition No. 450 of 2002 dated 18-12-2002 was also referred therein. The copy of the Circular was circulated to the concerned authorities in the State of Maharashtra. Learned A.P.P. Shri Kaldade states that the guidelines, Circulars and the Court orders issued in this regard are being followed in the State of Maharashtra after applications for parole or furlough leave are presented by the prisoners.

9. In this case, Shri Kaldade, learned A.P.P. states that unfortunately the report forwarded by the office of respondent No. 3 seems to have been not received by the office of respondent 2. Therefore, the said report was not placed before respondent No. 2-Divisional Commissioner, Aurangabad for passing appropriate orders. In fact, it is the submission of the learned A.P.P. that the respondent No. 2 in the light of the first adverse report thought it fit to call for second report from the office of respondent No. 3. Learned A.P.P. states that respondent No. 2 had shown enough concern regarding the request made by the prisoner.

10. Learned Counsel Shri Brahme, who is appointed by the Court, on behalf of

the petitioner states that the anxiety of the petitioner is to bring to the notice of the concerned authorities that if his application was processed in time he could have atleast seen his mother. However, due to delay in processing his application the petitioner was released after a week's time of the death of his mother. The anxiety expressed by the prisoner through this petition is noticeable. The pain suffered by the petitioner in not being able to meet his mother, before her death is understandable. It transpires from the material placed before us that the office of respondent No. 2 did not receive the report forwarded by the office of respondent No. 3, due to which, it seems that respondent No. 2 could not pass appropriate orders.

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 the 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. It is necessary to adopt appropriate procedure for maintaining record of such communications. The convict/prisoner shall be intimated of the final orders, in time, so as to minimize and avoid Court proceedings on that count A

14. With the above observations, the petition stands disposed of. Rule is discharged. A copy of this order be forwarded to the Principal Secretary, Home Department, Government of Maharashtra, Mantralaya, Mumbai and the concerned authorities. The parties to act on the copy of this order authenticated by the Court Sheristedar. The High Court Legal Sub-Committee, Aurangabad to make payment of professional fees of the advocate appointed as per rules.