
(2021) 06 BOM CK 0023

In the Bombay High Court

Case No : Criminal Writ Petition No. 1800 Of 2021

Rahul Shrihari Chaudhari? @APPELLANT @Ha State Of Maharashtra And Others

Date of Decision : 08-06-2021

Acts Referred:

Maharashtra Prisons (Mumbai Furlough And Parole) Rules, 1959 — Rule 6(6)
Indian Penal Code, 1860 — Section 143, 147, 148, 149, 302
Arms Act, 1959 — Section 4, 25

Citation : (2021) 06 BOM CK 0023

Hon'ble Judges : S.S. Shinde, J; Manish Pitale, J

Bench : Division Bench

Advocate : Aniket Vagal, Deepak Thakare

Final Decision : Dismissed

Judgement

S.S. Shinde, J

1. Rule. Rule made returnable forthwith with the consent of the learned Counsel appearing for the parties and heard finally.
2. This petition takes exception to the order dated 24 th June, 2020 passed by Respondent No.4 - Additional Director General of Police, Pune, rejecting the application of the petitioner for parole.
3. The petitioner was arrested by Kothrud police station vide C.R. No.414 of 2010 on 28.12.2010 for the offence punishable under section 302, 143, 147, 148, 149 of Indian Penal Code and under sections 4, 25 of the Arms Act. The Petitioner was convicted by Sessions Court, Pune on 31.1.2017 and sentenced to suffer R.I. for life and to pay a fine of Rs.5,000/-. On 28.7.2019, the petitioner filed an application for parole leave, which was rejected on 15.1.2019. Thereafter, the petitioner preferred an appeal before Respondent No.4 but the same was dismissed on 24.6.2020 and hence, this

Petition.

4. Learned Counsel appearing for the petitioner submitted that the application filed by the petitioner to release him on parole leave has been rejected

mainly on the ground that if the petitioner is released, there is a threat / danger to the life of the prosecution witnesses and relatives of the deceased. It

is submitted that the said observations made in the impugned order are not supported 23_wp.1800.2021 - J.doc by any material. The petitioner is in

custody since 2010 and there is no any untoward incident in the jail or elsewhere at the instance of the petitioner. The petitioner's real brother is willing

to stand surety, for the release of the petitioner.

5. Pursuant to the notices issued to the respondents, the Superintendent, Yerwada Central Prison, Pune, sent a report to this Court through the learned

Public Prosecutor. It appears from the said report that the surety, whose name was submitted by the petitioner to the jail authority, was not competent

and eligible to stand as surety as per relevant rules and procedure. Again, a report was called from the Assistant Commissioner of Police, Sinhadgad

road Division, Pune. The said report is adverse to the petitioner. It is stated in the said report that in case, the petitioner is released on parole, the

petitioner is likely to indulge into similar criminal activities and there is a threat to the relatives of the deceased and also to the other prosecution

witnesses. It is also mentioned in the said report that in view of the Government Notification dated 16.4.2018, as provided in sub-rule (6) of Rule 6 of

the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, the convict who is desirous of availing parole leave, shall 23_wp.1800.2021 -

J.doc furnish eligible and competent surety. In absence of furnishing the name of such surety, who is competent and eligible, the prayer for parole

cannot be acceded to. It appears from the report that in case, the petitioner is released on parole, there may be threat to the life of the witnesses and

also to the relatives of the deceased. It is also mentioned in the impugned order that the residence of the relatives of the deceased and the present

petitioner are in the same vicinity and, therefore, there would be danger to the life of the relatives of the deceased if the petitioner is released on

parole.

6. The report submitted by the Assistant Commissioner of Police, Sinhadgad Road Division, Pune, is based upon fact finding enquiry and, therefore, it is

not desirable to interfere with the said fact finding report while exercising the writ jurisdiction. The apprehension expressed by the respondent -

authority is well founded on the basis of the enquiry report submitted by the Assistant Commissioner of Police, Sinhagad region, Pune.

7. In that view of the matter, we are unable to persuade ourselves to entertain the prayer of the petitioner to release him on parole. Hence, the petition

stands rejected. However, we make it clear that rejection of this petition shall not be construed as an 23_wp.1800.2021 - J.doc impediment to the

petitioner to apply afresh for parole or furlough, as the case may be, keeping in view the relevant rules and time gap of six months between the date of

rejection of the application for parole and the date on which fresh application will be made. We make it clear that the observations made hereinabove

are restricted qua the enquiry made by the Assistant Commissioner of Police, Sinhagad Division, Pune and limited to the present proceedings and

would not come in the way of the petitioner in future.

8. Rule stands discharged accordingly.