
(2014) 07 BOM CK 0284

In the Bombay High Court

Case No : Criminal Writ Petition Nos. 138 and 466 of 2014

Rajusingh Ramsingh Mungona

APPELLANT

Vs

The Divisional Commissioner

RESPONDENT

Date of Decision : 03-07-2014

Acts Referred:

Citation : (2014) ALLMR(Cri) 3619

Hon'ble Judges : C.V. Bhadang, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : Kalsi, Ramteke and Yogita Thengre, Advocate for the Appellant; S.S. Jachak, Asstt. Public Pleader and A.S. Fulzele, Asstt. Public Pleader, Advocate for the Respondent

Judgement

B.P. Dharmadhikari, J.—Heard Dr. Kalsi with Ms. Ramteke, learned Counsel for the petitioner in Writ Petition No. 138/2014 and Ms. Yogita Thengre, learned Counsel (appointed) for petitioner in Writ Petition No. 466/2014. Mrs. S.S. Jachak, learned A.P.P. has appeared in Writ Petition No. 138/2014 for respondents, while Shri Fulzele, learned A.P.P. has appeared in the later Writ Petition. Though reply is filed in Writ Petition No. 138/2014, Shri Fulzele, learned A.P.P. is seeking time of two weeks to file reply in Writ Petition No. 466/2014. By consent of the parties, Writ Petitions are taken up for final hearing by issuing Rule, making the same returnable forthwith. Petitioner in both the matter is same. In Writ Petition No. 138/2014 he has challenged an order passed by the respondent No. 1 Divisional Commissioner, refusing him parole for 30 days to treat ailing wife, on the ground that he has in past shown the tendency of absconding. In reply filed, very same reason is being pressed into service.

2. Certificate issued by the Doctor was not produced on record and respondent No. 1 in the impugned order has observed that the illness of wife is not of serious nature. Petitioner along with a Pursis dated 25.03.2014 produced a certificate issued by Dr. R.M. Bhattad of Godawari Hospital, Daryapur dated 04.02.2014 to show ailment of his wife. During arguments, learned A.P.P. has produced a

certificate earlier given by the petitioner, issued by Dr. Vishal Singh of Achalpur.

3. As the ground that the petitioner has in past shown tendency of absconding, is not being substantiated, we find that the order dated 31.12.2013 passed by the respondent No. 1 and assailed in Criminal Writ Petition No. 138/2014, unsustainable.

4. In so far as Writ Petition No. 466/2014 is concerned, there the order dated 18.04.2013 passed by the respondent No. 1 DIG Prisons in respect of furlough has been questioned on the ground that the police report is adverse and at least on 4 occasions he has reported late. Ms. Thengre, learned counsel appearing for petitioner submits that the petitioner has reported late voluntarily and was not required to be arrested.

5. Learned A.P.P. appearing for respondent State reiterates request for grant of time to file reply. He also adds that the provisions of Rule 4(10) of the Prison (Bombay Furlough and Parole) Rule, 1959 do not require arrest to be made. This Court has already held that in such matters mere reporting late is not sufficient and the Authority has to attempt to find out the reasons by which the petitioner was prohibited from reporting within time, however, the impugned order does not show any such application of mind. In this situation, we quash and set aside the order dated 18.03.2014.

6. Request of petitioner to release him on furlough as also on parole is placed before the Competent Authority for taking decision afresh. It is open for the petitioner to submit copy of the Doctor's certificate dated 04.02.2014 for its due consideration by the Authorities in parole proceedings. Both Writ Petitions are thus partly allowed and disposed of.

7. Rule is made absolute in the aforesaid terms in both the petitions. Fees for the Advocate appointed in the matter to represent petitioner is quantified at Rs. 1,500/-.