

(2018) 07 BOM CK 0030

In the Bombay High Court

Case No : Criminal Writ Petition No.708 Of 2018

Ramdas @ Anna Chimaji Shinde

APPELLANT

Vs

State Of Maharashtra And Ors.

RESPONDENT

Date of Decision : 09-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 224
Constitution of India, 1950 — Article 226

Citation : (2018) 07 BOM CK 0030

Hon'ble Judges : S.S.SHINDE, J;V.K.JADHAV, J

Bench : Division Bench

Advocate : Bharati B. Gunjal, Y.G. Gujrathi

Final Decision : Disposed Off

Judgement

S.S. SHINDE, J

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition under Article 226 of the Constitution of India, has been filed by the Petitioner with following prayers:

B] By issuing appropriate writ or direction in like nature the order passed by Respondent No.2 dated 12/04/2018 may kindly be quashed and set

aside. [Exh.'D'],

C] By issuing appropriate writ or direction in like nature the order passed by Respondent No.3 dated 19/05/2018 may kindly be quashed and set aside.

[Exh.'H'],

D] By issuing appropriate writ or direction in like nature the Respondent No.3 be directed to release the Petitioner on extension of Parole Leave,

E] By issuing appropriate writ or direction in like nature the Respondent No.3 be directed to commute the punishment as the ratio 1:1 for overstayed period and transfer him in open prison.

3. It is the case of the Petitioner that he is undergoing the sentence of life imprisonment in Central Prison, Aurangabad. Due to serious illness of his wife, the Petitioner filed an application for parole. The said application came to be allowed as per order dated 2nd January, 2018, and the Petitioner was granted parole leave for 45 days. As per the said order the Petitioner was actually released on 21st February, 2018, and he was supposed to return to the jail on 8th April, 2018.

4. While the Petitioner was on parole leave, the condition of his wife became serious and therefore on 12th March, 2018, he filed an application for extension of further thirty days parole. Pursuant to the said application, the police report was called from the concerned police station, which was in favour of the Petitioner. However, relying upon the said police report, the Sub Divisional Police Officer, Georai, has forwarded a report taking objection for extension of parole leave on the ground that statement of doctor was not recorded. On the basis of report submitted by Sub Divisional Police Officer, the Divisional Commissioner, Aurangabad has rejected the request of the Petitioner for extension of parole by order dated 12th April, 2018.Â Â

5. In the mean time, as the Petitioner did not report back to the jail authorities within time after expiry of parole, crime under Section 224 of the Indian Penal Code came to be registered against the Petitioner on 25th April, 2018 at Talwada Police Station, TqÂGeorai, DistÂBeed. So also the proposal for deducting 85 days from the remission of the Petitioner was forwarded and the same was approved by Deputy Inspector General of Prison, Aurangabad by order dated 2nd June, 2018. As a crime has been registered against the Petitioner, another proposal has been sent to the Inspector General of Prison, Maharashtra State, on 26th April, 2018, for removing the Petitioner from open prison and transferring him to close prison. Hence this Petition.

6. Learned counsel appearing for the Petitioner submitted that as the wife of the Petitioner was serious, before expiry of parole leave, the Petitioner filed an application for extension of leave. Though the police report was

favourable to the Petitioner, the said application was wrongly rejected by Respondent No.2. As the Petitioner was under bona fide impression that his application for extension of parole would be granted, he remained away from the jail and therefore crime under Section 224 of the Indian Penal Code should not have been registered against the Petitioner. The Respondent Authorities have wrongly deducted remission of the Petitioner by 85 days. She therefore prayed that the Petition deserves to be allowed.

7. Learned A.P.P. appearing for the State, referring to the affidavits in reply filed by the Respondents submits that, as the wife of the Petitioner was not suffering from any serious illness, his application for extension of parole was rightly rejected by Respondent No.2. He further submits that, the Petitioner did not report back to the jail authorities within time after expiry of leave, therefore crime under Section 224 of the Indian Penal Code came to be registered. He further submits that, the Petitioner overstayed for 17 days after expiry of parole leave and therefore the proposal for deducting 85 days from the remission of the Petitioner was forwarded and the same was approved by Deputy Inspector General of Prison, Aurangabad. Learned A.P.P., therefore, submits that the Petition may be rejected.

8. We have heard learned counsel appearing for the Petitioner, and learned A.P.P. appearing for the Respondent " State. With their able assistance, we have carefully perused the grounds taken in the Petition, annexures thereto, and the replies filed by the Respondents. Upon careful perusal of the documents placed on record, it is clear that due to illness of his wife the Petitioner has requested to release him on parole leave. The Divisional Commissioner, Aurangabad has sanctioned the Petitioner's parole for 45 days by order dated 2nd January, 2018, and actually the Petitioner was released on parole on 21st February, 2018. The Petitioner was supposed to report to the jail authorities on 8th April, 2018, after expiry of parole. However, when the Petitioner was on parole, due to serious illness of his wife, he filed an application for extension of parole on 12th March, 2018, much before expiry of parole granted to him. Pursuant to the said application, police report was called. Assistant Police Inspector, Police Station Talwada, TqGeorai, DistBeed has sent the report in favour of the Petitioner. It is stated in the said report that the reason for extension of parole is genuine, the medical certificate is issued by the authorized medical officer stating

therein that ailment of the wife of the Petitioner is serious, no offence was registered against the Petitioner when earlier he was released on parole and during the said period he has regularly attended the police station at Talwada and his conduct was good. Stating the aforesaid reasons, the Assistant Police Inspector, police station, Talwada has recommended that extension of parole may be granted to the Petitioner. The Sub Divisional Police Officer, Georai though considered the said police report, he has not recommended the case of the Petitioner for extension of parole on the ground that along with the medical certificate regarding the ailment of wife of the Petitioner, statement of doctor was not recorded. As the police report was favourable to the Petitioner, the Sub Divisional Police Officer ought to have recommended the case of the Petitioner for extension of parole. There was no reason to record the statement of the doctor and attach the same along with the application for extension of parole. Further the Divisional Commissioner has rejected the request of the Petitioner for extension of parole, without considering the facts that the police report was in favour of the Petitioner, an authorized doctor has certified that wife of the Petitioner was suffering from serious illness requiring further treatment, the past conduct of the Petitioner was not objectionable when earlier he was released on parole/furlough. Â

9. It is pertinent to note that the Petitioner has applied for extension of parole leave on 12th March, 2018. Though Rule 25 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, "the Prisons Rules, 1959) came to be deleted as per the Notification dated 16th April, 2018, issued by the Home Department, State of Maharashtra, at the relevant time when the Petitioner has applied for extension of parole leave, the said Rule 25 of the Prisons Rules, 1959, was in force, which reads as under:

25. Extension of the period of parole.

Â The Competent Authority may, on the application made by the prisoner or by his relatives or friends, or legal advisor one week in advance, before the expiry of the period of parole granted, by an order in writing, extend the period of parole for such further period or periods as may be specified in such order, on the same grounds, and on the same conditions on which the prisoner was originally granted parole, or on such other conditions as the Competent Authority may determine:

Provided that the total period of parole so extended shall not exceed ninety days.

10. Said Rule 25 of the Prisons Rules, 1959, was applicable to the facts of the case of the Petitioner. Considering the above provisions, the jail authorities should not have lodged the offence against the Petitioner under the provisions of Section 224 of the Indian Penal Code before expiry of period of 90 days from the date of release of the Petitioner on parole. The Division Bench of the Bombay High Court, Bench at Aurangabad in the case of Ashishrao Venkatrao Phad vs. State of Maharashtra , in the similar fact situation, in Para 18 of the Judgment, held thus:

18. However, the petitioner was released on 23.6.2016. As per Government guideline dt. 1.1.2015, the prosecution under Section 224 of IPC could have been filed against him only after period of 90 days was over from 23.6.2016. The Petitioner has returned late by 25 days after enjoying parole of 60 days and thus he has returned to Jail on 85th days and as per the Government Policy itself, the petitioner could not have been prosecuted under Section 224 of IPC. It is relevant here to state that the petitioner has returned to the Jail of his own. He was served with order rejecting extension of parole for second time on 12.9.2016 and he returned on 17.9.2016. Considering the Government policy, we hold that no FIR could have been lodged against the Petitioner when he had returned within 90 days." "Â Â

11. In the present case also, the Petitioner was released on parole for 45 days, and during the said period he had applied for extension of parole which came to be rejected by the Respondent Authorities. The said order was intimated to the Petitioner on 21st April, 2018, and thereafter the Petitioner on his own reported back to the jail authorities on 25th April, 2018. There was delay of 17 days in surrendering before the jail authorities. Considering the fact that the Petitioner was released on parole for 45 days and thereafter he overstayed for 17 days, it is clear that he reported back to the jail authorities on 62nd day, much before the expiry of the period of 90 days. Therefore the offence under Section 224 of the Indian Penal Code should not have been registered against the Petitioner before expiry of the period of 90 days.

12. It is admitted fact that the Petitioner has overstayed for 17 days after the expiry of parole, under the bona fide impression that his application for extension of parole would be favourably considered due to illness of his wife. For

the said misconduct of overstay, the Respondent Authorities have registered a crime against the Petitioner for the offence punishable under Section 224 of the Indian Penal Code. For the same misconduct, the Respondent Authorities have deducted his remission by 85 days. So also for the same misconduct the Respondent Authorities have also transferred the Petitioner from open prison to closed prison. Considering the above aspects of the matter, it is clear that for one misconduct, the Respondent Authorities have imposed multiple punishments upon the Petitioner. Therefore, we are of the considered view that the matter requires reconsideration by the Respondent authorities.

13. For the reasons afore stated, the matter is remitted back to Respondent Nos.2 and 3 to reconsider the grievances raised by the Petitioner in this Petition. Respondent Nos. 2 and 3 are directed to take decision, after taking into consideration the observations made herein above, as expeditiously as possible, however within TWO MONTHS from today. Rule is made absolute on above terms. The Writ Petition stands disposed of, accordingly.

14. This order be communicated to the Petitioner immediately, through the concerned Superintendent of Jail.