
(2012) 03 BOM CK 0176

In the Bombay High Court

Case No : Criminal Writ Petition No. 150 of 2012

Sitaram

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 29-03-2012

Acts Referred:

Citation : (2013) 2 BomCR(Cri) 389

Hon'ble Judges : T.V. Nalawade, J;Naresh H. Patil, J

Bench : Division Bench

Advocate : R.D. Sanap, for the Appellant; S.D. Kaldate, Assistant Public Prosecutor, for the Respondent

Judgement

Naresh H. Patil, J.—Rule. Rule made returnable forthwith. The Petitioner's application for Parole Leave was rejected by the Divisional Commissioner, Aurangabad, by order dated 16th March, 2012.

2. During the course of hearing of the Petition and after perusing the record placed before us, we noticed that there is abnormal delay in forwarding police report, as is noticed in several cases by this Court. On several occasions, this Court has issued directions to the Authorities, to curb the delay in forwarding police report.

3. On behalf of the Superintendent of Police, Hingoli, certain record is produced before us, to demonstrate that report was submitted to the Divisional Commissioner, Aurangabad. We have perused the same.

4. It is submitted by the learned A.P.P. that the Divisional Commissioner, Aurangabad has taken serious note regarding problem of receiving police reports at a highly belated stage, frustrating the rights of the prisoners and effective implementation of the orders passed by the Divisional Commissioner. The Divisional Commissioner, Aurangabad, by communication dated 27th March, 2012, made to the Additional Public Prosecutor, High Court, Bench at Aurangabad, stated that for effective implementation of the Government Circular

dated 1st August, 2007, instructions have been issued to the concerned Authorities, that henceforth police report be issued by Fax/Email. We appreciate the efforts of the Divisional Commissioner, Aurangabad, in this regard. The said letter dated 27th March, 2012 issued by the Divisional Commissioner, Aurangabad, along with the other documents regarding police report, submitted by the learned A.P.P., are taken on record and marked as "X" for identification. A copy of the order passed by the Divisional Commissioner, Aurangabad, rejecting application of the Petitioner for Parole Leave, is placed on record. The same is taken on record and is treated as one of the Annexures to the Petition.

5. There is another feature noticed by this Court in the present case, after perusal of the original file maintained by the Office of the Divisional Commissioner, Aurangabad. A note is put up in respect of the application filed by the prisoner to release him on Parole/Furlough leave, by the clerk of the Divisional Commissioner's Office. The said note is put up before the Tahsildar, then Deputy Commissioner and ultimately before the Divisional Commissioner, for endorsements. The file is put up with a note by the clerk that it would be proper to reject the Parole application. The Divisional Commissioner has signed and put a date as "16.3". We have been shown a copy of the order purported to be passed by the Divisional Commissioner, Aurangabad, dated 16th March, 2012. That order also demonstrates that Authority signing on the same had signed "for the Divisional Commissioner".

6. It is necessary that the Divisional Commissioner applies his/her mind to the facts and the material placed before the Authority concerned and thereafter takes a decision in this regard. The Divisional Commissioner is entitled to peruse the notes, endorsements put up by the subordinates, but the application of mind of the Divisional Commissioner, shall be reflected in clear terms, which is possible only if the Divisional Commissioner puts his opinion on the material placed before the Authority concerned. Simply signing below the note put up by the clerk, countersigned by the Tahsildar or Deputy Commissioner, may give rise to allegations that there was no application of mind on the part of the Divisional Commissioner.

7. We direct the Divisional Commissioner, to henceforth take note of the observations made by us and streamline the procedure of screening such applications and passing appropriate orders on such applications, reflecting application of mind of the Divisional Commissioner. Turning to the facts of this case, the application of the Petitioner for releasing on Parole Leave, has been rejected by the Divisional Commissioner, due to adverse police report. In past, the Petitioner was released thrice, on leave. Considering the past conduct of the Petitioner as a prisoner and the request made by the Petitioner in this regard, we are of the view that the Divisional Commissioner to reappreciate the case again and pass fresh order. With this view, we pass following order:

ORDER

(A) The order dated 16th March, 2012, passed by the Divisional Commissioner, Aurangabad, rejecting the application of the Petitioner for Parole Leave, is quashed and set aside.

(B) The matter is remanded back to the Divisional Commissioner, Aurangabad for fresh consideration of the issue and for passing appropriate orders.

(C) We expect the Superintendent of Police, Hingoli, to comply with the instructions issued by the Divisional Commissioner, Aurangabad, in respect of forwarding the police report diligently on Fax or Email, in future.

(D) Rule is made absolute on the terms indicated as above.

(E) Authenticated copy of this order be provided to the learned A.P.P. for forwarding the same to the Divisional Commissioner, Aurangabad and the Superintendent of Police, Hingoli.

(F) The counsel was appointed for the Petitioner. The Secretary, High Court Legal Services Sub Committee, Aurangabad to pay professional fees to the counsel appointed, as per rules.