
(2003) 04 BOM CK 0076

In the Bombay High Court

Case No : Criminal Writ Petition No. 132 of 2003

Vasanta Bhedruji Khangar

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 17-04-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 18(2), 19

Citation : (2003) 04 BOM CK 0076

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : Nandita Dube, for the Appellant; D.B. Yengal, A.G.P., for the Respondent

Final Decision : Allowed

Judgement

S.T. Kharche, J.—Rule. Heard forthwith by consent parties.

2. Learned Counsel for the petitioner contended that the petitioner has been convicted for the offence punishable u/s 302 of the Indian Penal Code by the Sessions Judge, Bhandara vide judgment and order dated 12-8-1992 and he was on bail before conviction during the course of trial. She further contended that the petitioner had filed appeal against the judgment and order of conviction before this Court which has been dismissed. She contended that the marriage of the daughter of the petitioner, by name Jyotikiran, is to be solemnized on 22-4-2003 and the wedding cards are printed. She contended that the petitioner in the past had availed furlough leave on seven occasions and he had surrendered to the Prison Authorities on due dates. She further contended that the Competent Authority is not empowered to grant parole for the wedding purpose and hence, the petitioner has approached this Court for grant of parole for thirty days. She contended that as per Rule 18(2) of the Prisons (Bombay Furlough and Parole) Rules, 1959, parole can be granted for the said purpose. In support of this submission, she relied on the decision of the Division Bench of

this Court in the case of Manjulabai Gulabe Vs. State of Maharashtra, .

3. Learned A.P.P. does not dispute that the marriage of the daughter of the applicant is to be solemnized on 22-4-2003 at Hanuman Mandir (Killa). Shankarpur, Tahsildar Chimur, District Chandrapur. It is stated in affidavit in reply filed on behalf of respondents that the proper enquiry has been made and during the course of enquiry, it is revealed that the wedding ceremony is scheduled on the said date and the proposed surety Dr. Bakaram Shende is ready to stand surety and he holds Immovable property.

4. Learned A.P.P. contended that as per Rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959, parole cannot be granted for the wedding purpose and in the circumstances, petition for grant of parole may be rejected.

5. I have considered the contentions canvassed by the learned Counsel for both the parties. Rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959 contemplates as under:-

"19. When a prisoner may be released on parole.---

A prisoner may be released on parole for such a period not exceeding thirty days at a time, as the Competent Authority referred to in Rule 18, in its discretion may order, in cases of serious illness, or death of nearest relative such as mother, father, sister, brother, children, spouse of the prisoner, or in case of natural calamity such as house collapse, floods, fire. No such parole or extension of parole shall be granted without obtaining a police report in all cases except in the case of death of his nearest relatives mentioned above.

Provided that a prisoner shall not be released on parole for one year after expiry of his last parole except in case of death of his nearest relatives mentioned above."

6. The Division Bench in the case of Manjulabai w/o Kisna Gulabe v. State of Maharashtra (supra) has laid down that "the purpose of Rule 19 of Prisons (Bombay Furlough and Parole) Rules is to afford an opportunity to the prisoner to meet his relatives and to take part in not only the moment of sorrow, illness or death but also in the moment of joy such as a occasion of marriage of his daughter or sister. The father, mother and son i.e. the entire family were in jail. When the marriage was to be performed, the petitioners were entitled to be released on parole for a short period. The past record of the prisoners-petitioners was good. There was no criminal antecedents in respect of these three prisoners. Distinction will have to be made in the case of the persons who have committed offence under peculiar circumstances, for the first time, in their life and they will have to be classified as offenders and not mere criminals and those persons, who have lived a life as criminals and are hardened criminals would, therefore, fall under the different category and stringent Rules will have to be applied and the provisions of Furlough and Parole which are provided will also have to be strictly complied with in their case. The petitioners were not hardened criminals and,

therefore, the Competent Authority had clearly erred in applying the provisions of Rule 19 strictly in the letter and not in its spirit."

7. In the present case, antecedents of the petitioner are not bad and there is no material from which an inference could be drawn that the petitioner is a hardened criminal. Therefore, the case of the petitioner-prisoner can certainly be considered for grant of parole in view of the admitted fact that the marriage of petitioner's daughter is to be solemnized on 22-4-2003 and the petitioner is also ready to furnish surety of his nephew Dr. Bakaram Shende. In such circumstances, I see no impediment in granting parole to the petitioner for a limited period of two weeks in order to facilitate him to attend the marriage of his daughter and to take part in the moment of joy with his family members on the occasion of the marriage ceremony.

8. Consequently, this petition is allowed. Competent Authority is directed to release the petitioner on parole for the period of two weeks from the date of his release on furnishing surety of Dr. Bakaram Shende with further direction that after expiry of the period of parole, the petitioner shall report back to the prison and in case of default, the prison authorities shall apprehend him and bring him back to the prison. With this direction, petition disposed of and the rule made absolute in the aforesaid terms. Hamdast allowed.