

(2018) 08 BOM CK 0117

In the Bombay High Court

Case No : Criminal Writ Petition No.234 of 2018

Vijay Pralhad Varankar (In Jail)

APPELLANT

Vs

Divisional Commissioner Amravati Division Amravati And
Another

RESPONDENT

Date of Decision : 23-08-2018

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Indian Penal Code, 1860 — Section 342, 376, 376(2)(a)
Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 4(13), 4(b)
(13), 19(2)(B)(i)

Citation : (2018) 08 BOM CK 0117

Hon'ble Judges : R.K. DESHPANDE, J; ARUN D. UPADHYE, J

Bench : Division Bench

Advocate : S.D. Chande, A.M. Joshi

Judgement

1. The petitioner in the present case is the convict for the offence punishable under Section 376 of the Indian Penal Code for committing the act of rape. He has undergone the sentence of about five years of imprisonment, and the sentence imposed upon him is of ten years' imprisonment for the offence under Section 376(2)(a), and one year's imprisonment for the offence under Section 342 of the Indian Penal Code. Both the sentences are to run concurrently.

2. The present writ petition is filed challenging the order dated 3rd August 2018 passed by the Divisional Commissioner, Amravati Division, Amravati, refusing to grant the petitioner parole leave for thirty days on the ground of the bar created under Rule 4(b)(13) read with Rule 19(2)(B)(i) of the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959 (the Rules of 1959), amended by the notification dated 26th August 2016. It is not

in dispute that after examining the case of the petitioner on merits, it was recommended by the authorities concerned to grant him parole leave for thirty days, but the only ground of rejection is of the bar created in the aforesaid Rules. It is in this background the validity of the said Rules is the subject-matter of challenge in this petition.

3. Shri Joshi, the learned Additional Public Prosecutor appearing for the respondents, has relied upon the Division Bench decision of this Court in the case of Sharad Devaram v. State of Maharashtra, reported in 2016(4) Mh.L.J. 228, wherein the validity of similar such Rule 4(13) of

the Rules of 1959, introduced by the notification dated 23-2-2012, was upheld. The Division Bench has relied upon the decision of the Apex Court

in the case of State of Haryana and another v. Jai Singh, reported in AIR 2003 SC 1696, wherein it is held in categorical terms that the classification

created for imposing bar to grant parole or furlough, based on the nature of offences, is a valid classification for the purpose of deciding whether the

persons who have committed such offences should be granted remission or not.

4. Shri Chande, the learned counsel appearing for the petitioner, has relied upon the decision of the Apex Court in the case of Asfaq v. State of

Rajasthan and others, reported in (2017) 15 SCC 55, wherein it is held in Para 9 that the conviction in a serious and heinous crime cannot be the

reason for denying the parole per se. This decision of the Apex Court does not refer to its earlier judgment of a Coordinate Bench in the case of

Jai Singh, cited supra. This decision, however, is later in point of time than the decision rendered by the Division Bench of this Court in Sharad

Shelake's case, cited supra, which obviously had no occasion to consider the same.

5. In the decision of this Court in Sharad Shelake's case, the question involved was of rejection of furlough leave on the ground that the petitioner

therein was convicted and sentenced for the crime of kidnapping, in respect of which, Rule 4(13) of the Rules of 1959 in the notification dated 23-2-

2012 created a bar for release on furlough. The decision of the Apex Court in Jai Singh's case, relied upon by the Division Bench of this Court,

was on the question of remission in sentence.

6. It may be possible to make the distinction between the case creating a bar for grant of remission covered by the decision of the Apex Court in Jai

Singh's case and the case creating a bar for grant of parole in the decision of the Division Bench of this Court in Sharad Shelake's case.Â We are of

the view that the decision of the Division Bench of this Court in Sharad Shelake's case runs contrary to the ratio of the decision of the Apex Court in

Asfaq's case.

7. We, therefore, think that the judicial propriety and discipline requires us to refer the matter to a Larger Bench instead of making out a distinction

between the decision of the Apex Court in Jai Singh's case and the decision of the Division Bench of this Court in Sharad Shelake's case.Â Similarly,

it would also not be proper on our part to hold that the decision of the Division Bench of this Court in Sharad Shelake's case stands impliedly overruled

by the decision of the Division Bench in Asfaq's case.

8. In view of above, the Registry is directed to place this matter before Hon'ble the Chief Justice for referring the following question of law for the

decision by the Larger Bench :

Whether Rule 4(13) of the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959, introduced by the notification dated 26Â8Â2016, creating

an absolute bar to claim release on furlough leave and consequently Rule 19(2) (B)(i) of the Rules of 1959 to claim release on parole leave to the

convict for the offence of rape is violative of Articles 14 and 21 of the Constitution, particularly when the offenders or convicts in other serious

offences are entitled to such leave?

9. The office to act accordingly.