



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION (ST) NO.22342 OF 2024**

Shrihari Rajlingam Guntuka] .. Petitioner
vs.
State of Maharashtra & Anr.] .. Respondents

Mr.M.M. Chaudhari for the Petitioner.
Mr.Y.M. Nakhwa, APP for the State.
Ms.Suvarna Chorge, Jailor Gr. II, Nashik Jail, present.

**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ**

DATE : 12th NOVEMBER, 2024.

P.C.

1. This is one more instance, when we have noted that the Judgments/Orders passed by this Court are not followed by the Respondent Authorities when it comes to the release of the Prisoners/ Convicts on Parole/Furlough as per the The Prisons (Bombay Furlough and Parole) Rules, 1959.

The Petitioner, a convict undergoing his sentence in Nashik Road Central Prison do not dispute that he has availed parole and furlough leave as per the Rules applicable to him.

On 06.09.2024 he submitted a proposal to the Respondent No.2, Divisional Commissioner, Nashik Division, through Respondent No.4, The Superintendent of Prison, for being released on parole since his

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wife was required to undergo an operation of uterus and in the wake of the medical emergency, he sought his release on parole, since Rule 19 contemplated serious illness of father/mother/spouse/son/daughter as one of the ground of release on parole.

2. This application, instead of being forwarded to the Competent Authority as contemplated under Rule 18 of the Rules of 1959, is filed by the Superintendent Nashik Road Central Prison, by his order dated 30.09.2024, by warning the Petitioner that he is not entitled for availing the parole leave, in wake of the circular issued by the Home Department of the State Government on 10.02.2022, with reference to Rule 19 Clause 3 (g) and the rejection is on the ground that he has not completed a span of one and half year from the date of his surrender in the prison after availing the last furlough leave.

The order also mention that on being released on furlough he had reported back to the prison on 30.08.2024 and only 21 days have lapsed since then, therefore, he is not entitled for parole.

3. We had an opportunity to deal with a similar scenario when the prison authorities had adopted a similar stand on the eligibility to be released on parole only on completion of one and half years of actual imprisonment to be counted from the date of last return of prisoner either on furlough or parole leave in case of **Balaji s/o Abhaji Puyad vs. State of Maharashtra & Ors.** (Criminal WP (ST) No.21606/2024) on 25/10/2024.

By referring to Rule 19 (3) of the Furlough Rules and with reference to the decision of the Full Bench of this Court in case of **Kantilal Nandlal Jaiswal vs. Divisional Commissioner, Nagpur**

Division, Nagpur & Ors.¹, where an identical provision introduced by the Amendment of 16.04.2018 fell for consideration and since it contemplated a similar embargo being imposed upon the Prisoner for being released on emergency or regular parole, for the period of one year after expiry of his last emergency or regular parole, except in case of death of his near relatives, the Full Bench had ruled upon the said issue. Finding that the present Rule introduced by the Notification of 10.02.2022, is similarly worded except instead of period of one year, is now stretched over to a period of one and half year of actual imprisonment, to be counted from the last return, either on availing parole or furlough.

4. We have exhaustively reproduced the observations of the Full Bench, which have clearly noted that such a provision runs absolutely counter to the avowed object of Rules of 1959, pertaining to grant of parole and it also fail to satisfy the classification test and, therefore, it has been declared to be manifestly arbitrary.

We were saddened to note that despite the clear exposition of law to the aforesaid effect, an identical provision found its way in the Furlough Rules to the Amendment dated 10.02.2022 and instead of one year the period had now been extended to one and half years we clearly expressed our view that a contingency like serious illness of a near relation, natural calamities like house collapse, flood, fire, earthquake is an un-foreseen contingency and one cannot speculate as to when it will strike and definitely if a prisoner is entitled to avail parole leave rule to deal with such an emergent situation and hence, the imposition of condition that he shall have to wait for a period of one and half year, is completely unreasonable.

¹ 2019ALL MR (CRI) 4003

We found our reasoning to be fortified by the observations of the Full bench in the case of ***Kantilal Nandlal Jaiswal*** (*supra*).

5. Despite the clear exposition of law on the said aspect and our attention is also invited by the learned counsel for Petitioner to an order passed by the Division Bench at Nagpur on 05.02.2024 in case of ***Rajesh Sambhaji Gopnarayan vs. Superintendent of Jail*** (Criminal Writ Petition No.112/2024), where a strong displeasure was expressed by the bench, in the wake of the non adherence to the law laid down by the Full bench of this Court and when the Division Bench issued a direction to reconsider the Petitioner's Application and take appropriate decision within a stipulated period and a specific direction was issued, which was worded as below :

"We, hereby direct the authority that they shall not reject the parole leave application on the ground which has been concluded by this Court in regard to the above referred Full Bench decision of this Court."

We are astounded to note that the Respondent's carry an impression that effect of the decision, is restricted only to Nagpur Division and possibly the Authorities are under an impression, it is not applicable to them.

We must, therefore, issue a reminder and clarify that when law is laid down by this Court, it is equally applicable in the jurisdiction of all the Benches and the Full Bench decision though delivered at Nagpur, equally binds the Prison/Jail Authorities all over the State of Maharashtra.

It is really unfortunate that despite penning down the proposition of law by interpreting the relevant Rules pertaining to furlough and parole, the Respondent/Authorities have turned deaf ear to the pronouncement and have continued to adopt their regime of rejecting

the Applications with less concern being shown to the law laid down by this Court.

6. In this case, not only the Respondent No.4 has assumed to himself the jurisdiction of deciding the parole application, which in fact is vested either in Respondent No.2 or in Respondent No.3, has forewarned the Petitioner by titling his order as "Samajpatra" and rejecting his application on the ground that he has not completed one and half year from the date of his last reporting in the prison and the Application has been preferred within a short span of 21 days when he has surrendered himself after availing the furlough leave.

7. We strongly deprecate the approach adopted by Respondent No.4 in defeating the rights of the Petitioner. We must clarify that it is no doubt open for the Authorities releasing the convict/prisoner on parole to consider the genuineness of the claim staked by him like illness of wife and nothing could have stopped the Authorities from verifying whether his wife was really ailing.

Though the learned APP Mr.Nakhwa has made a feeble attempt to urge that he has not established the illness of his wife by annexing the medical documents, we do not find any merit in his contention, as the basis of the impugned order is not this reason, but it is mere reliance upon the Rule 19(3) and non expiry of period of one and half year from the date of surrender of the Petitioner, after availing furlough leave.

The Respondent No.4 who has shown dis-respect to the law laid down by this Court, must, therefore, be directed to reconsider the Application as per The Prisons (Bombay Furlough and Parole) Rules, 1959, and since the Rules do not permit him to take decision on the

Application of grant of parole, we deem it appropriate to issue a direction that the Application shall be forwarded to Respondent No.2 within a period of one week from today.

For denying the right of the Petitioner in an arbitrary manner and in utter disregard to the law laid down by this Court, we deem it appropriate to impose cost of Rs.25,000/- upon Respondent No.4 to be paid by him personally to the Petitioner, within a period of four weeks from today.

We expect Respondent No.2 to take a decision upon the application received by him within a period of one week and after being satisfied about the genuineness of the cause, which has been stated to be a ground for release on parole, due opportunity shall be afforded to the Petitioner to produce necessary medical certificates and documents to establish his cause.

8. Let a copy of this order be also communicated to the Additional Chief Secretary, Home Department to be circulated to all the concerned so that this mistake of disregarding the law laid down by this Court, is not repeated.

Writ Petition stands disposed off with the above directions.

(MANJUSHA DESHPANDE, J)

(BHARATI DANGRE, J)