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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION (ST) NO.21606 OF 2024**

Balaji s/o Abhaji Puyad .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

...

Mr.Rupesh A. Jaiswal with Ms.Anjali Raut for the Petitioner.

Mrs.M.M.Deshmukh, A.P.P. for the State/Respondent.

...

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

DATED : 25th OCTOBER, 2024

P.C:-

1. The application preferred by the Petitioner on 06/09/2024 for being released on parol, in the wake of illness of his wife, received rejection from the Superintendent, Nashik Road Central Prison, on 30/09/2024 on the ground that the condition introduced in Rule 19(3) vide Circular dated 10/02/2022, providing that the prisoner shall be eligible for subsequent release on regular parol, only after completion of one and half years of actual imprisonment to be counted, from his last return, either on furlough or regular parole.

2. The order record that he was earlier released on furlough and had returned to prison on 10/04/2024 and within a span of 5 months and 11 days, he filed the application for parole, which is not admissible to him.

M.M.Salgaonkar

3. Heard Mr.Jaiswal, the learned counsel for the Petitioner and Mrs.Deshmukh, the learned A.P.P. for the State.

The stand adopted by the State is the specific prohibition introduced, while considering the case of the prisoner on regular parole, which can be granted on any of the following grounds or reasons, namely :-

- (i) Serious illness of father/mother/spouse/son/ daughter;
- (ii) Delivery of wife (except high security risk prisoners)
- (iii) In case of natural calamities such as house collapse, flood, fire, earthquake, etc.

Clause (C) of Rule 3, has set out the eligibility and limits of such parole and specify thus :-

“19(C) When prisoner is sentenced to life or whose average sentence exceeds fourteen years,

(i) the prisoners may be considered for first release on regular parole after completion of three years of imprisonment counted from the date of his admission to prison under convicted crime;

(ii) the prisoner shall be eligible for subsequent release on regular parole, after completion of one and half year of actual imprisonment to be counted from his last return either from furlough or regular parole;

(iii) the prisoners shall be eligible for maximum forty five days of parole in a year, which can be extended upto sixty days once in three year only under exceptional circumstances.

Relying upon sub-clause (ii) of clause (C), the request of the Petitioner to release him in the wake of illness of his wife is rejected.

4. Mr.Jaiswal, the learned counsel for the Petitioner, has invited our attention to a Full Bench decision of this Court at Nagpur in the case of ***Kantilal Nandlal Jaiswal Vs. Divisional***

*Commissioner, Nagpur Division, Nagpur & Ors.*¹, where somehow identical provision introduced by the amendment of 16/04/2018, came up for consideration, by virtue of which, there was an amendment in the Prisons (Bombay Furlough and Parole) Rules, 1959 and Rule 19 came to be replaced, by prescribing as to when a prisoner may be released on emergency parole/regular parole. As far as the regular parole is concerned, it contemplated the release in three contingencies, with the proviso being appended to the following effect :-

“Provided that, a prisoner shall not be released on emergency or regular parole for the period of one year after the expiry of his last emergency or regular parole except in case of death of his nearest relatives mentioned above.”

5. The present Rules, which are inserted by the Notification dated 10/02/2022, thereby substituting Rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, has now categorised parole into three compartments; emergency parole, special parole and regular parole. Emergency parole, is permitted to be availed for 7 days for participating in the rituals related to the death of a near relative mentioned therein, whereas special parole can be availed by a prisoner for marriage of son/daughter/sibling and regular parole may be granted for the three causes stipulated above, but subject to a stipulation, which has been introduced in 19(C)(ii), imposing an embargo for releasing a prisoner on regular parole before completion of one and half year of actual imprisonment to be counted from his last return either from furlough or regular parole.

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6. A similar proviso, in the 2018 Rules, received consideration at the hands of the Full Bench, and in paragraph 34, it was concluded that it is unbelievable for a person to fathom as to when the contingency for availing parole like serious illness or natural calamity as stipulated therein may occur. In very lucid words, the Full Bench observed thus :-

“34. A perusal of Rule 19(2) of the Rules of 1959 quoted above, shows that such a basis for creating an exception certainly had no nexus with the objectives for grant of parole leaves specified in Rule 1(A) of the Rules of 1959. If the objectives for grant of parole leave included under Rule 1(A) (a) to enable the inmate to maintain continuity with family life and under Rule 1(A)(d) to enable him/her to develop active interest in life, it is difficult to understand why the prisoner in whose case period of one year from grant of last emergency or regular parole has expired, cannot be released even when he has a genuine case to show that either his father or mother or spouse or son or daughter is suffering from serious illness or that a natural calamity has occurred such as house collapse, flood, fire or earthquake. It appears to be highly insensitive and even cruel that a prisoner is to be told that since period of one year from the last emergency or regular parole has expired, he cannot be granted parole even if there is serious illness of close relatives or that a natural calamity has occurred, because such events are uncertain and he can be granted parole only if there is death, which is a certainty. In other words, a prisoner, just because the aforesaid period of one year is to expire, will not be able to see his/her close relatives during serious illness, even facing death, and also when a natural calamity occurs, but he would have to wait for death to occur for grant of parole. This runs absolutely counter to the said avowed objectives of the Rules of 1959, pertaining to grant of parole as specifically stated in Rules 1(A)(a) and (d) of the Rules of 1959. This indicates that apart from the classification test, the aforesaid proviso to Rule 19(2) of the Rules of 1959, is manifestly arbitrary, on the face of it.”

7. Applying the test of Article 14, as expounded by the Apex Court, in the case of *Navtej Singh Johar Vs. Union of India*², the Full Bench arrived at the conclusion that the proviso to the Rule 19(2) to the Rules 1959 would be termed to be nothing but manifestly arbitrary and answered the issue against the State in the following words :-

² (2019) 10 S.C.C. 1

“41. In view of the above it is found that the proviso to **Article 19(2) of the Rules off 1959** introduced in terms of Notification dated 16/04/2018 violates Article 14 and 21 of the Constitution of India and thereby question (ii) is answered against the State.

42. Accordingly, the said proviso to Rule 19(2) of the Rules of 1959 introduced in terms of Notification dated 16.04.2018 is struck down as violative of Articles 14 and 21 of the Constitution of India and it is found to be ultra vires even to the objectives stated in Rule 1(A) of the Rules of 1959.”

8. We are really surprised to note that despite exposition of law to the aforesaid effect, an identical provision has found its way in the Furlough Rules, through the amendment dated 10/02/2022 and this time instead of one year, the period of completion, being contemplated as one and half year of actual imprisonment to be counted from his last return either from furlough or regular parole.

Though, the cause like death, is now categorised into emergency parole, still the contingency like serious illness of father/mother/spouse/son/daughter; delivery of wife; natural calamities such as house collapse, flood, fire, earthquake definitely is an unforeseen contingency and one cannot speculate as to when such contingency will occur and, definitely, in such a case, the prisoner shall not be asked to wait for one and half year of actual imprisonment, to be undergone by him, when he seek parole leave on any of these contingencies, set out for availing regular parole.

9. For the very same reason, which the Full Bench has recorded in paragraph 34 of the decision in the case of **Kantilal Nandlal Jaiswal** (supra) to be read with paragraphs 41 and 42, though we are satisfied to strike down the validity of the said

provision, but since there is no challenge before us, restricting ourselves to the facts of the case, by recording that impugned order passed by the Respondent No.3 cannot be sustained, in the wake of the observations of the Full bench and since, the denial of parole to the Petitioner is only on the ground that within a period of 5 months and 11 days of his incarceration, on being admitted to the prison after availing the furlough leave, he is seeking parole, according to us, is a decision which cannot be sustained in law and deserve to be set aside.

Needless to state that as far as the merits of the matter are concerned, it is open for the authority to ascertain, whether the cause cited by the Petitioner is genuine and if it is found to be so, then Rule 19(3)(C)(ii) shall not come in his way in availing the parole leave.

10. In the wake of the above discussion, the Writ Petition is made absolute, by directing Respondent No.3 to re-consider the application of the Petitioner on its own merits and we expect the decision to be taken, within a period of one week from today.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)