

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 782/2022

Arun s/o Gulab Gawli,
C-8535, aged about 66 years,
R/o. Gitai Society, Dagdi Chawl,
Baburao Jagtap Marg, Byculla (W),
Mumbai : 11.
Presently Nagpur Central Prison,
Nagpur.

... PETITIONER

VERSUS

1. Deputy Inspector General
(Prisons) (East) Nagpur.
2. The Superintendent Central
Prison, Nagpur.

... RESPONDENTS

Mr. M. N. Ali, Advocate with Shahurk Shah, Advocate for
petitioner.

Mr. S. M. Ukey, APP for respondent Nos. 1 & 2.

CORAM : VINAY JOSHI AND
MRS. VRUSHALI V. JOSHI, JJ.
DATE OF JUDGMENT : 14/11/2022.

ORAL JUDGMENT (PER : VINAY JOSHI, J.)

RULE. Rule made returnable forthwith.

2. Heard finally by consent of both the parties.

3. The petitioner raises a challenge to the order dated 07.11.2022 passed by the Deputy Inspector General (Prisons) (East) Nagpur, whereby the petitioner's urge for special parole has been allowed with a rider. The authority limited the duration of special parole for four days including the traveling period in Police Escort with certain amount of cash security and surety. The challenge is to the limited duration of parole period along with the condition of Police Escort and the amount of heavy surety.

4. The petitioner has applied for special parole in terms of Rule 19(2) of the Maharashtra Prison (Mumbai Furlough and Parole) Rules 1959 ('Rules of 1959') for the marriage of his son Yogesh proposed to be held on 17.11.2022 at Mumbai. The competent authority has called the Police Report and upon considering the entire material has conditionally allowed special parole for the period of four days including traveling period with Police Escort and Security.

5. The petitioner is convicted for the offence punishable under Sections 302, 120-B of the Indian Penal Code read with Section 3(1)(i), (i)(ii), 3(2), 3(4) of the Maharashtra Control of Organized Crime Act ('MCOCA'). It is petitioner's contention that till date, he has undergone imprisonment for approximately 14 years and whenever he was released on parole or furlough, on each and every occasion he has surrendered on due date without delay. Moreover, during his leave period, he had not committed any anti-social activity nor any offence has been registered against him. It is submitted that till date, on 12 occasions, petitioner was released on either parole or furlough, and each time, he has abided by the conditions imposed therein and had not committed breach of peace. To substantiate said contention, the petitioner has produced order of this Court dated 08.04.2021 passed in Criminal Writ Petition No. 258/2021, wherein a chart indicating the petitioner's prior release on furlough or parole has been incorporated with specific period and dates. The petitioner has referred few other orders, by which he was released by this Court on parole for the reason of medical emergency and marriage.

6. The principal grievance is about grant of parole for only four days that too in Police Escort with heavy surety. It is straneously argued that the impugned order does not indicate reasons as to why

the period of special parole has been curtailed from 15 days to 04 days only. Moreover, there are no reasons to indicate necessity to impose condition of Police Escort. In this regard, the petitioner relied on the decision of this Court dated 18.02.2019 in case of Dilip S/o. Sopan Pawar Vs. The State of Maharashtra and another (Criminal Writ Petition No. 354/2019 with another connected matter), wherein this Court has emphasized about the necessity of reasons.

7. Upon notice of this Court, the respondent-State filed reply justifying impugned order. It is stated that in view of adverse Police Report and the petitioner being involved in number of criminal activities, the conditions imposed by the authority are appropriate. Moreover, it is submitted that in view of amended Rule 19(2) of the Rules of 1959, the special parole is for the period of four days including traveling period with provision of extension of next 4 days.

8. Moreover, the learned APP has justified the order of special parole in the Police Escort by pointing towards the report submitted by the Additional Commissioner of Police. It is submitted that as per report, the petitioner has rivalry with other gangs indulging into criminal activities, therefore, there is threat to his life. He would submit that the authority was satisfied about the threat perception of the petitioner and therefore, the order of Police Escort is justifiable. On

the point of cash security, it has been submitted that in order to vouch the timely return, the quantum of surety has been fixed which is appropriate.

9. We have carefully considered the revival submissions and impugned order along with amended notification dated 10.02.2022 of Rule 19(2) of the Rules of 1959 which reads as below:-

“19(2) Special Parole – (A) All convicted prisoners except foreigner and death sentenced prisoners may be eligible for special parole of four days, including the traveling time, for marriage of son/daughter/siblings. All the terms and conditions, except the period for which it is granted, shall mutatis-mutandis apply for the grant of such special parole including all the proviso applicable to the emergency parole, only with the difference that, instead of Superintendent of Prison, any request for grant of such special parole will be considered by the Deputy Inspector General of Prisons.

(B) The initial period of four days of special parole may be extended by a further additional period of maximum upto four days, total being not more than maximum eight days, by a written order containing just, sufficient, cogent and self-explanatory reasons, passed by the Deputy Inspector General of Prisons, before expiry of initial period of four days. No extension shall be granted to such special parole in any case and under any circumstances beyond the period of total eight days.”

10. The learned counsel appearing for the petitioner has fairly conceded the legal position about the restricted time span under amended Rule 19(2) of the Rules of 1959 as per Government Notification dated 10.02.2022. He has waived his submission claiming 15 days parole by conceding that as per amended Rule 19(2) of the Rules 1959, special parole for the purpose of marriage would be for

four days only with provision of extension. In short, he has waived the challenge raised to the period of special parole.

11. On the point of imposition of condition of Police Escort, it has been submitted that, in past on all 12 occasions, no such stringent condition was imposed. He has submitted that on each and every occasion, the same reasons were quoted by the reporting authority, however, the Police Escort was not ordered. We have given our thoughtful consideration to the report of concerned Assistant Commissioner of Police ('ACP') along with the order impugned herein. Though it has been mentioned in the report that total 46 offences have been registered, however all the offences were prior to the incarceration. The reason of life threat has not weighed to the authority on earlier occasion. No special reasons have been quoted as to this time what are the compelling circumstances which have weighed to the authority in anticipating life threat to the petitioner. Moreover, the impugned order is bereft of reasons as to why the Police Escort is essential. Concededly, on all earlier occasions, no such condition was imposed and therefore, we find no justification in imposing the condition of providing Police Escort which needs to be waived.

12. As regards to the quantum of security, the authority has directed the petitioner to deposit cash security of Rs. 5 lakhs along with

surety of equal amount. Similarly, the said order is not backing with any reason. The learned counsel appearing for the petitioner would submit that barring isolated instance all the time the security amount was near about 15,000/- only. The learned APP has pointed out that once the petitioner was directed to deposit cash surety of Rs. 2 lakhs as well as security of the equal amount. In our view, imposition of heavy security would ultimately amounts to deprivation of availing the parole which if he is otherwise entitled. Generally, we do not interfere into the discretion of the authority in quantifying the amount of cash surety/security. However, in view of the quantum of security fixed by the authority, we feel it necessary to quantify the same so as to avoid further round of litigation.

13. In view of above, petition is partly allowed. The impugned order is modified to the extent of setting aside the condition of providing Police Escort. The amount of security is altered to the extent of furnishing cash security of Rs. 1 lakh with surety in the like amount.

14. Petition is disposed of in above terms.

15. The petitioner's learned counsel has submitted that since the petitioner is required to go to Mumbai, considering journey period, he requires extension of four days. In this regard he urged to direct the

authority to decide the extension application within stipulated period. It is for the authority to take call. We hope and trust that the authority will act in accordance with law in case of filing of extension application.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

Gohane