

HIGH COURT OF KARNATAKA**Date of Decision: 21st December 2023****Bench: Justice K. V. Aravind**

WRIT PETITION No.17011/2023 (GM-POLICE)

SRI VENKATESH ...PETITIONER**VERSUS****1. THE STATE OF KARNATAKA****2. THE SUPERINTENDENT, OPEN AIR JAIL,
DEVANAHALLI****3. THE SUPERINTENDENT OF POLICE,
CHIKKABALLAPUR DISTRICT ...RESPONDENT(S)****Legislation and Rules:**

Article 226 of the Constitution of India

Sections 498A and 302 of the Indian Penal Code, 1860

Section 56 of the Karnataka Prisons Act, 1963

Karnataka Prisons and Correctional Services Manual, 2021

Subject:

The petitioner, Sri Venkatesh, convicted of offences under IPC, seeks to quash the order dated 17.06.2023 refusing parole and seeks his release on parole to meet his wife and new-born child.

Headnotes:

Conviction and Appeal – Petitioner convicted in S.C. No.88/2013 for offences under IPC Sections 498A and 302 – Dismissal of appeal by Division Bench of High Court. [Paras 2-3]

Parole Application – Petitioner's previous parole compliance and current application for parole to meet newborn child and wife – Initial refusal based on community safety concerns. [Paras 4-6]

Legal Framework for Parole – Karnataka Prisons Act, 1963, and Karnataka Prisons and Correctional Services Manual, 2021 outlining parole provisions – Criteria for granting parole include maintaining family relationships and dealing with family matters. [Paras 8-10]

Court's Analysis – Invalidity of reasons against parole in the report by Respondent No.3 – Absence of specific objections or material indicating violation of previous parole terms by the petitioner. [Paras 11-14]

Referred Cases:

Not mentioned in the provided content.

Representing Advocates:

- Sri Vinay Kuttappa for Petitioner
- Smt. Spoorthy Hegde N., HCGP for Respondents

ORDER

This petition seeking to quash impugned order/recommendation dated 17.06.2023 by respondent No.3 at Annexure - A dated 17.06.2023.

2. Brief facts:

The petitioner has been convicted in S.C. No.88/2013 by the Principal District and Sessions Judge, Chikkaballapur and sentenced to imprisonment for life for the offences punishable under Sections 498A and 302 of the Indian Penal Code, 1860.

3. The petitioner aggrieved by the judgment dated 16.01.2015 passed in S.C. No.88/2013 preferred the Criminal Appeal No.285/2015 before this Court. The Division Bench of this Court by judgment dated 02.06.2021, dismissed the appeal confirming the order of conviction.

4. The petitioner was granted parole for thirty days by order dated 28.10.2021. The petitioner filed another application seeking parole at Annexure - J dated

26.05.2023 on the ground to repair his residential house. In a report by respondent No.3 to the respondent No.2 dated 17.06.2023 recommended to refuse the parole on various grounds.

5. Sri. Vinay Kuttappa, learned counsel appearing for the petitioner submits that though parole application was filed to repair the residential house, the petitioner's wife has given birth to male child on 17.08.2022; he has no opportunity to share his love and affection to the child. Hence, on humanitarian grounds, the parole ought to have been granted. The petitioner was released on parole by order dated 28.10.2021, the petitioner complied with the conditions and surrendered to the Jail Authorities after the period of parole. Conduct of the petitioner is good. On the above grounds, prays to release the petitioner on parole for a period of thirty days.

6. Smt. Spoorthy Hegde N., learned High Court Government Pleader appearing for the respondent submits that no case is made out to exercise discretionary power by the respondents to extend the parole. Further submits that the report given by respondent No.3 is considered, it is not in the interest of the villagers to release the petitioner on parole. On the above submissions, requests for dismissal of the writ petition.

7. Heard the learned counsel for the parties and perused the records.

8. It is not in dispute that the petitioner was released on parole for thirty days by release order dated 28.10.2021 in exercise of power under Section 56 of the Karnataka Prisons Act, 1963. It is not the case of the respondents that

(i) The petitioner has violated the conditions of earlier parole.

(ii) No complaint by the Prison Authorities on the conduct and behavior of the petitioner to refuse parole.

9. Clause 635 and 636 of the Karnataka Prisons and Correctional Services Manual, 2021 (hereinafter referred to as 'the Manual' for short) provides for release of a prisoner on parole. Clause 635 and 636 reads as under:

635. Statutory Provision;

"i. Section 55 of the Karnataka Prisons Act, 1963 and Rule 191 of the Karnataka Prisons Rules, 1974 confers on State Government or any authority empowered by it the power to release prisoners temporarily;

ii. General Parole and Emergency Parole to inmates are progressive measures of correctional services. The release of a prisoner on leave not only saves him from the evils of incarceration but also enables him to maintain social relations with his family and the community.

iii. It also helps him to maintain and develop a sense of self-confidence. Continued contacts with family and the community sustain in him a hope for life.

iv. The provisions for grant of parole should be liberalized to help a prisoner to maintain a harmonious relationship with his family. The privilege of parole should, of course, be allowed to selective prisoners on the basis of well-defined norms of eligibility; v. General and Emergency Parole cannot be claimed as a matter of right but it is a concession granted to the convicted prisoner;

vi. Director General of Prisons and Correctional Services reserves the right to debar or withdraw any prisoner or category of prisoners from the concession of any parole. vii. The expense of journey to and from his place of stay for general parole or emergency parole shall be borne by the prisoner concerned; viii. The period spent on general parole or emergency parole shall not count as sentence;

ix. The prisoner will be liable and recalled immediately to prison in case he violates any of the conditions by the Director General of Prisons and Correctional Services; x. A register and separate file shall be maintained in Prison; xi. A person can give surety for two or more prisoners."

636. Objectives of Parole;

"i. To enable the inmate to maintain continuity with his family life and deal with family matters and settlement of life after release; ii. To enable him to maintain and develop his self-confidence, constructive hope and active interest in life;

iii. Agricultural operations like sowing and harvesting; iv. To make arrangements for admission of children in school/college/technical education; v. Construction and repair of home;"

10. Clause 635 of the Manual provides for release of the prisoner on parole to enable him to maintain social relations with his family and the community, to maintain harmonious relationship with his family, to enable the

prisoner to maintain continuity with his family life and deal with family matters and settlement of life after release.

11. The reasons and objections provided in clause 635 and 636 to the Manual if considered, refusal of parole to provide the petitioner an opportunity to meet his wife and new-born child which he has no occasion to see the child from its birth would deprive him to maintain social relations with his family and deal with family matters.

12. Respondent No.3 has recommended not to release the petitioner on parole on the basis of the enquiries said to have been conducted with the petitioner's villagers. The reasons assigned in the report are vague and without any basis. The report would not indicate who are the persons objected his parole and under what circumstances, the peace and harmony of the village would be disturbed on release of the petitioner on parole. Hence, report at Annexure - A is without any basis and application of mind.

13. The respondent has not placed any material or even sought to contend that the earlier release by order dated 28.10.2021, the petitioner has violated the terms and conditions of the parole.

14. In view of the aforesaid discussion, this Court is of the view that Annexure - A is without any basis and is to be quashed and writ petition is to succeed. Hence, the following:

ORDER

1. Writ petition is allowed.
2. Annexure - A passed by respondent No.3 is hereby quashed.
3. Respondent No.2 is directed to release the petitioner on general parole for a period of thirty days subject to the condition as has been imposed in the earlier order of parole order dated 28.10.2021.
4. No order as to costs.

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