

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JULY, 2022

BEFORE

THE HON'BLE MR.JUSTICE S.G.PANDIT

WRIT PETITION NO.7387/2022 (GM-POLICE)

BETWEEN:

B M MUNIRAJU
S/O MUNINANJAPPA
AGED ABOUT 66 YEARS
PRESENTLY IN CENTRAL JAIL
PARAPPANA AGRAHARA
BENGALURU-560 100.

...PETITIONER

(BY K SREEDHAR, ADV.)

AND:

1. THE JAIL SUPERINTENDENT
CENTRAL JAIL
PAPRAPPANA AGRAHARA
BENGALURU-560 100.
2. THE CIRCLE INSPECTOR OF POLICE
HENNUR POLICE STATION
BENGALURU-560 071.

...RESPONDENTS

(BY M VINOD KUMAR, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING QUASH THE IMPUGNED ENDORSEMENT BEARING DATED 05.03.2022 VIDE ANNEX-E AND ALSO REPORT OF THE R2 BEARING DATED 22.02.2022 OF THE R2 ANNEX-F AND DIRECT THE R1 TO RELEASE THE PETITIONER

ON PAROLE FOR PERIOD OF 2 MONTHS WITHOUT REFERRING THE MATTE TO THE R2 POLICE.

THIS PETITION COMING ON FOR ORDERS THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner, a convict for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short "NI Act") is before this Court under Article 226 of the Constitution of India, praying to quash the endorsement bearing No.BCP/J3/541/2020-21 dated 05.03.2022 (Annexure-E) wherein the petitioner's application for parole for a period of two months is rejected and to quash the report of the second respondent bearing No. Hennuru/PS/CC/B2/2022 dated 22.02.2022 (Annexure-F).

2. Heard learned counsel Sri.K.Sreedhar for petitioner and learned Additional Government Advocate Sri.Vinod Kumar for respondents. Perused the writ petition papers.

3. Learned counsel for the petitioner Sri.K.Sreedhar submits that the petitioner is convicted for the offence

punishable under Section 138 of the NI Act by this Court in Crl.Appeal.Nos.18/2011, 19/2011, 20/2011 and 21/2011 setting aside the judgment of acquittal dated 03.11.2010 in C.C.No.1761/2009, C.C.No.1763/2009, C.C.No.5682/2008 and C.C.No.8513/2008 on the file of 12th Additional Chief Metropolitan Magistrate, Bengaluru. It is submitted that, against the judgment of conviction, the petitioner filed SLP (Crl.) 2953 and 2956 of 2021 before the Hon'ble Supreme Court and the Hon'ble Supreme Court by order dated 29.06.2021 directed to list the matter after four weeks to enable the petitioner to deposit 50% of the amount in question in the Registry of the Hon'ble Apex Court. Learned counsel would submit that the petitioner filed an application to the respondent-authorities for parole so as to arrange the amount for depositing before the Hon'ble Supreme Court. The respondent-authorities failed to consider his application for grant of parole. This Court, by order dated 22.07.2021 in W.P.No.12765/2021 directed the respondent-Jail authorities to consider and dispose of the representation/application for

parole. It is submitted that in pursuance of direction of this Court, the respondent-Jail authorities by endorsement dated 21.08.2021 rejected the request of the petitioner for parole. The said rejection under endorsement dated 21.08.2021 was the subject matter of W.P.No.16147/2021 before this Court. This Court, by order dated 13.01.2022 directed the respondents to consider petitioner's application for ordinary parole leniently for a short period. While issuing such direction, this Court held that Rule 191 of the Karnataka Prison Rules, 1974 cannot be invoked in case of the petitioner since conviction of the petitioner is for a minor offence and also observed that petitioner who is convicted for minor offence is entitled for consideration of his application for parole leniently. The grievance of the petitioner is that in spite of the observation of this Court that Rule 191 of 1974 Rules is not invocable against the petitioner, the respondents again rejected the request of the petitioner based on the Police report dated 22.02.2022 at Annexure-F. It is submitted that the second respondent submitted a report stating that if the

petitioner is released on parole, there is chance of petitioner involving in other fraudulent offenses and he may threaten the witnesses who had deposed against him. It is submitted that in the criminal case against the petitioner, only the complainant was examined and no other witnesses were examined. Hence, the said contention that the petitioner may threaten the witnesses cannot be accepted. Therefore, he submits that the report itself is against the facts and the question of petitioner threatening witnesses would not arise. Thus, learned counsel for the petitioner seeks for a direction to the respondents to consider his application for parole on its merit.

4. On the other hand, learned AGA would submit that the petitioner would not be entitled for parole, since the petitioner is convicted for more than three offences. The petitioner has suffered more than three convictions hence, in terms of Rule 191 of 1974 Rules the petitioner would not be entitled to parole. Inviting attention of this Court to Annexure-A,

learned AGA submits that the petitioner is convicted in four offences under Section 138 of the NI Act. Further, learned AGA inviting attention of this Court to the report filed by the second respondent which is at Annexure-F would submit that if the petitioner is granted parole, there is every chance of petitioner threatening the witnesses and every chance of petitioner repeating the offence. Therefore, he submits that the petitioner would not be entitled for any relief sought in the present writ petition.

5. This Court, in previous round of litigation in W.P.No.16147/2021 disposed of on 13.01.2022 at paragraphs 5 and 6 has observed as follows:

“5. Apparently, the petitioner is not convicted for the serious IPC offences and that the offences under the Negotiable Instruments Act, are ordinarily treated as minor offences in criminal jurisprudence. Therefore, Rule 191 of 1974 Rules is not invocable, since the provisions of the said Rule encompass only very serious offences. This apart, no material is produced to show that the

petitioner is classified as “habitual criminal” in terms of the said Rule.

6. Apparently, the convicts undergoing sentence for minor criminal offences are entitled to have their request for parole or furlough leniently considered, more particularly, during the special circumstances like Covid Pandemic. The reliance of the learned Additional Government Advocate on the decision of Rashi Kumara’s case supra would not come to his rescue, since the litigant in the said case was convicted for the offence of murder punishable under Section 302 IPC, which is not the case here.”

6. This Court has categorically come to the conclusion that Rule 191 of 1974 Rules is not invocable against the petitioner, since it could be invoked when there is very serious offence. It also observed that the conviction of the petitioner is under the NI Act which are ordinarily treated as minor offences in criminal jurisprudence. It is also observed that there is no material to show that the petitioner is classified as “habitual criminal” in terms of the said Rule. At

paragraph 6, this Court observed that the application of the petitioner needs lenient consideration by the respondent-authorities.

7. When this Court has specifically observed that Rule 191 of 1974 Rules is not invocable against the petitioner, the respondent-Police authorities could not have raised the same objections in the present writ petition also. There is no impediment to consider the petitioner's request for parole under Rule 191 of 1974 Rules. The Police report (Annexure-F) which is relied on by the respondent-Police authorities also cannot be a material to deny consideration of petitioner's application for parole. As submitted by the learned counsel for the petitioner only one witness i.e., complainant was examined in C.C.No.1761/2009 and connected cases. Therefore, apprehension of the respondents that the petitioner may threaten the witnesses who had deposed against the petitioner has no basis. Since the petitioner is not declared as an habitual criminal, the

apprehension of the respondents that the petitioner may repeat the offence is also has no basis. Thus, for the reasons stated above, I am of the view that the application of the petitioner for parole needs to be reconsidered by the respondent-authorities. Hence, the following order:

(a) The writ petition is allowed.

(b) The endorsement bearing No No.BCP/J3/541/2020-21 dated 05.03.2022 (Annexure-E) and the Police report bearing No. Hennura/PS/CC/B2/2022 dated 22.02.2022 (Annexure-F) are quashed.

(c) The first respondent-Jail Superintendent is directed to consider petitioner's application for parole afresh, without reference to Rule 191 (1) (g) of Prison Rules 1974, within a period of one month from the date of receipt of a copy of this order.

**Sd/-
JUDGE**

mpk/-*CT:bms