

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 452 OF 2015

SHAIKH ALSAM SHAIKH AFSAR

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Petitioner : Through Jail : Mr. R. A. Jaikswal (Appointed)

APP for Respondent State: Mr. S. B. Pulkundwar

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CORAM : T. V. NALAWADE &**INDIRA K. JAIN, JJ.****DATE : 6th May, 2015****PER COURT :**

1. Rule. Rule is made returnable forthwith by consent of the parties. Criminal writ petition is heard finally.

2. Proceeding is filed to challenge the order made by the authorities of rejection of furlough leave application. The applicant is convicted for the offences punishable under sections 363, 376 of the Indian Penal Code and sentenced imprisonment for 10 years. He is behind bars since prior to 2012. It appears that the authority has rejected the application by observing that the surety suggested by the applicant is not in position to control the applicant and other that reason is given that in case of his release there is possibility of creating tension in the society and between two communities.

3. Observations made in the order do not show that any record to that effect is available on record. Submissions made show that the applicant was involved only in one case which is mentioned above. He faced the trial and now he is behind bars and he has suffered the sentence for more than three years. In view of this circumstances, the reasons given by the authorities are not at all acceptable. This Court holds that on the basis of of the material which is mentioned in the order, it cannot be said that he will not surrender to jail after availing furlough leave and therefore

he will be in position to create law and order problem. If there is apprehension of that kind, some condition also can be put by the authorities. Observations made with regard to creating tension in two communities is unwarranted. Authority is not expected to make such observation lightly.

4. In the result, the petition is allowed. The order made by the authorities dated 29.04.2015 is set aside.

5. Matter is remanded back to the authorities for consideration of the matter. Fresh decision is to be taken within one month from today.

6. Rule is made absolute in the above terms.

7. Fees of the learned counsel appointed through legal aid is quantified to Rs.1500/-.

(INDIRA K. JAIN, J.)

(T. V. NALAWADE, J.)

JPC