

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
BENCH AT AURANGABAD

**CRIMINAL WRIT PETITION NO.641 OF 2015**

Baban s/o Ananda Dange ... PETITIONER

**VERSUS**

The State of Maharashtra & ors. ... RESPONDENTS

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Shri G.S. Shembore, Advocate for petitioner  
Shri B.L. Dhas, A.P.P. for State

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CORAM:    S.S. SHINDE AND  
                  A.I.S. CHEEMA, JJ.

DATED:    9th July, 2015.

ORAL ORDER :

1.            Heard the counsel for for petitioner and learned A.P.P. for the State. Perused the impugned order at Exhibit B (Page 10) of compilation of Writ Petition. It appears that the prayer of the petitioner for releasing him on furlough leave has been rejected on the ground that the petitioner was not able to furnish the name of surety. It further appears that, the petitioner prayed for releasing him on furlough leave on

executing personal bond. However, the respondent authority rejected the same, observing that there is no provision for releasing the convict on furlough leave on executing personal bond.

2. The Division Bench of this Court in a judgment reported in **2012(2) Bom.C.R. (Cri.) 219 [Anil Vishwanath Pathwe Vs. D.I.G. Prison & anr.]**, after considering the Full Bench judgment of the Gujarat High Court and also the Bombay High Court, and other judgments, which are referred in the said judgment, held in para 12 thus :

“Even though the learned amicus curiae may be justified in pointing out that, in the past, the Single Judges as well as Division Benches of this Court have ordered release of the concerned prisoners, we are not inclined to do so, as, in our considered opinion, if it is the discretion of the Competent Authority to dispense with any condition specified by the rules in a given case, it is for that Authority to examine all aspects of the matter, and record its satisfaction in that behalf by a speaking order. Moreso because under the rules, that order will be amenable to appeal, where, the prisoner will get opportunity to assail the correctness of the reasons recorded by the Authority, if required. Besides, it will ensure that, if the Competent Authority exercises discretion in favour of any prisoner, it would be obliged to record reasons, firstly, as to the jurisdiction for treating the case on hand as falling under excepted category and, secondly, to note as to how the conditions specified in the order would ensure that the prisoner would return to jail for undergoing his remaining sentence and would not impair the public interest in any manner.”

3. In the light of observations of the Division Bench in the case of Anil Pathwe, the part of impugned order which without recording reasons, refuses the petitioner to grant furlough leave on executing personal bond stands quashed. The respondent No.2 is directed to reconsider the prayer of the petitioner to release him on executing personal bond/ furnishing cash surety, in his discretion, within four weeks from today, by assigning reasons. While taking decision afresh, the concerned authorities to take into considerations the observations in the judgment in the case of Anil Pathwe (supra).

4. Writ Petition is partly allowed accordingly and stands disposed of.

(A.I.S. CHEEMA, J.)

( S.S. SHINDE, J.)