

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.675 OF 2015

Mohd. Moin S/o Faridullah Qureshi,
C-7786, Central Prison,
Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai,
- 2) The Divisional Commissioner,
Aurangabad Division, Aurangabad,
- 3) The Jail Superintendent,
Aurangabad Central Jail,
Aurangabad.

...RESPONDENTS

...
Mr.M.M. Chaudhari Advocate for Petitioner.
Mr.V.D. Godbharle, A.P.P. for Respondents.

...

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

DATE : 22ND JUNE, 2015

ORAL ORDER :

1. Rule, returnable forthwith. By consent of the parties, taken up for final hearing.

2. It is the case of the Petitioner that he came to be arrested by Nirmal Nagar Police Station in Crime No.1 of 1993 under Section 3(3) of the Terrorist and Disruptive Activities (Prevention) Act (TADA Act), and under other offences. On 24th July 2007 the Petitioner came to be convicted and sentenced to suffer life imprisonment. The Petitioner till date has availed 3 times parole leave and 7 times furlough leave and timely reported to jail when ever he was released and time of his said leave stood expired. On 26th December 2014, the Petitioner submitted application with Respondent No.2 for parole leave. On 16th March 2015, mother of the Petitioner submitted application before Respondent No.2 requesting to expeditiously decide the application

filed by the Petitioner for parole leave. By order dated 13th April 2015, Respondent No.2 rejected the application of the Petitioner. Hence this Petition.

3. In pursuance to the notice issued to Respondents, Respondent No.2 has filed affidavit-in-reply. In Para 3 of the affidavit-in-reply, it is stated that Assistant Commissioner of Police, Kherwadi Division B.K.C. Bandra (East) submitted his report dated 16th January 2015 opposing release of Petitioner on parole leave. It is stated in the report that surety is of 70 years of age and surety is not in a position to have control over the prisoner. It is further stated in Para 3 that Petitioner was released on furlough leave for six times and on parole for three times and he himself has surrendered to the prison authorities after leave period is over.

4. Upon reading the above mentioned

averments in affidavit-in-reply and annexures thereto, it appears that prayer of the Petitioner to grant parole leave is rejected only on the ground that the surety, i.e. mother of the Petitioner, is 70 years of age and will not be able to control the Petitioner.

5. The learned counsel appearing for the Petitioner has invited our attention to Ground No. VII in the Petition and submitted that previously the mother of the Petitioner three times stood surety and as per the undertaking of the surety, the Petitioner was released from jail and on all three occasions the Petitioner reported back to the jail authorities within time.

6. Therefore, past conduct of the Petitioner if taken into consideration, coupled with the fact that mother of the Petitioner three times stood surety and on all three occasions the Petitioner surrendered back within time, we are of the view

that Petitioner can be released on parole leave on furnishing surety of his mother, subject to fulfillment of other conditions, if any.

7. In the result, impugned order is set aside. The Petitioner is directed to be released on parole leave, on furnishing surety of his mother, subject to fulfillment of other conditions, if any.

8. Rule made absolute on the terms indicated above. Writ Petition stands disposed of, accordingly.

[A.I.S.CHEEMA, J.]

asb/JUN15

[S.S. SHINDE, J.]