

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1412 OF 2014

Mohd. Sharif Badshah Shamim Khan

..Petitioner

v/s.

The State of Maharashtra .

..Respondents

Mr. K.S.Patil, Amicus Curie for the Petitioner.

Mrs. S.V.Sonawane, APP for the Respondent/State.

CORAM : RANJIT MORE &

SMT. ANUJA PRABHUDESSAI,JJ.

DATED : FEBUARY 4, 2015.

P.C.

1. Heard, learned Amicus Curie Mr. Patil for the petitioner and Mrs. Sonawane, learned APP for the State.
2. By order dated 2.7.2013, the Dy. Inspector General of Prison rejected the petitioner's application for parole. This order is confirmed by the Appellate Authority, namely the Addl. Director General and Inspector General of Prison, Maharashtra, in the appeal. Both the above orders are impugned in the present writ petition which is filed through jail.
3. The petitioner's application is rejected on the ground that:

(i) There is adverse report of the Asst. Police Commissioner, Deonar Division, Mumbai,

(ii) Earlier on 24.3.2012 when the petitioner was released on the furlough he overstayed for a period of 254 days and ultimately he was arrested and brought to the police station.

(iii) In view of the provisions of Rule 4(4) and 4(10) the petitioner is not entitled to be released on furlough.

4. Mr. Patil, learned counsel submits that the petitioner's application for furlough was recommended by the Superintendent of Jail. He also submitted that for overstaying on earlier occasions, remission of the petitioner is likely to be forfeited and therefore refusing furlough to the petitioner will amount to double jeopardy.

5. Learned APP supports the impugned orders. She relied upon the provisions of Rule 4(10) of the Prisons, (Bombay Furlough and Parole) Rules, 1959.

6. Having gone through the impugned orders and considering the rival submissions we don't find merit in the petition. There is no dispute that on earlier occasion when petitioner was released on furlough he overstayed for the period of 254 days and that he was

arrested and brought to the prison. Under Rule 4(10) of the Prisons (Bombay Furlough & parole) Rules, furlough shall not be granted to prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time and after release on parole or furlough. Both the lower authorities have relied upon this provision and refused the petitioners application for furlough. We dont see any error in the same.

7. So far as the petitioner's contention regarding double jeopardy is concerned, we dont find any merit as much as, as on today the proposal of forfeiture of the petitioner's remission is made, the same is pending for consideration.

8. In view of the above, petition is devoid of merits and the same is dismissed.

(ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)