

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 910 OF 2016

Gururaj Bhimappa Barikai,
Age : Major, Occu. Prisoner
C. No. 4823, District Open Jail
Paithan, District Aurangabad

PETITIONER

VERSUS

1. The State of Maharashtra
through Secretary,
Home Department, Mantralaya,
Mumbai
2. The Deputy Inspector General
(Prison), Central Prison,
Aurangabad
3. The Superintendent of Jail,
District Aurangabad

RESPONDENTS

Mr. S.P. Koli, Advocate for the Petitioner
Mr. K.S. Patil, A.P.P. for the respondents/State

CORAM : S.S. SHINDE AND
SANGITRAO S. PATIL, JJ.

DATE : 14th September, 2016

ORAL JUDGMENT (PER : S.S. SHINDE, J.) :

Rule. Rule made returnable forthwith. With
the consent of the learned counsel for the petitioner
and the learned A.P.P., heard finally.

2. The petitioner is undergoing life imprisonment for the offence punishable under section 302 of the Indian Penal Code (for short, "I.P.C.") in the open prison at Paithan, District Aurangabad. It is the case of the petitioner that during his twelve years period in jail, he has never availed of the furlough or parole. The Deputy Inspector General of Prisons, Central Region, Aurangabad, vide order dated 31st March, 2016, allowed the application filed by the petitioner for grant of furlough. However, the petitioner is asked to execute a surety bond of his relative. According to the petitioner, since he cannot furnish the said surety, he is unable to avail of the furlough.

3. The learned counsel for the petitioner, in support of his contention that the Authority concerned has discretion to dispense with the requirement of furnishing surety bond of the relative and the petitioner can be released on execution of personal bond, invited our attention to Rule 6 of the Prisons (Bombay Furlough and Parole) Rules, 1959 and also the judgment of the Division Bench of this Court in **Kumar**

***Rama Gowda Vs. The State of Maharashtra and others 2016
ALL MR (Cri) 2809.***

4. On the other hand, the learned A.P.P., representing the State, submits that a Circular bearing No. JLM-1012/Pra.Kra.85/Prison-2, dated 24th August, 2012 has been issued by the Government of Maharashtra, Department of Home, Mantralaya, Mumbai, wherein it is provided that in case the convict is released on parole/furlough and wishes to go to the other State to avail of the said parole/furlough, he should provide surety of at least one relative or any other competent surety. The learned A.P.P. submits that in case the petitioner is released on furlough, who hails from the State of Karnataka, without obtaining the surety of his relative, he may not be available to undergo the remaining sentence. He submits that even the report received from the Superintendent of Police, Vijapur is adverse to the petitioner.

5. We have considered the submissions advanced by the learned counsel for the petitioner and the learned A.P.P. appearing for the State. With their able assistance, we have perused the memo of the writ

petition, annexures thereto and the relevant Rule from the Prisons (Bombay Furlough and Parole) Rules, 1959 and also the judgment of the Division Bench of this Court in **Kumar Rama Gowda** (supra).

6. It appears that while dealing with somewhat similar fact situation, this Court, in the case of **Kumar Rama Gowda** (supra), relying upon the judgment of the Full Bench of Gujarat High Court in the case of **Natia Jiria Vs. State of Gujarat and others, 1984 CRI.L.J. 936** and also the judgment of the Full Bench of this Court in the case of **Dipak s/o Sudhakar Wakalekar Vs. State of Maharashtra and others 2011 CRI.L.J. 3263**, has taken a view that in case the convict is not able to execute the surety of his relative/s, respondent No. 2 has discretion to accept the personal bond submitted by the convict and release him on furlough/parole.

7. In the light of discussion in the foregoing paragraphs, we direct the respondents that the period mentioned in the order of release of the petitioner on furlough, dated 31st March, 2016, issued by respondent No. 2, be extended by another four weeks and without insisting for furnishing the surety of petitioner's

relative, release the petitioner on execution of personal bond in the amount of Rs. 5000/- (Rupees five thousand). Needless to observe that respondent No. 2 may impose the condition asking the petitioner to attend the nearest Police Station during the period of furlough.

8. Rule is made absolute in the above terms and the writ petition stands disposed of accordingly.

9. Since the learned counsel Mr. S.P. Koli is appointed as Amicus Curiae to prosecute the cause of the petitioner, his fees be paid as per the schedule of fees maintained by the High Court Legal Service Sub-Committee at Aurangabad.

[SANGITRAO S. PATIL]
JUDGE

[S.S. SHINDE]
JUDGE

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