

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 22 OF 2016

Shivayya Marihal,
Prisoner no. 807,
Confined in Central Jail,
Aguada, and permanent
r/o. Hannikeri, Bailhangal Taluka,
Dist. Belgaum, State of Karnataka.

..... Petitioner

V e r s u s

1. Inspector General of Prisons,
Government of Goa, Panaji, Goa.

2. Director General of Police,
Police Headquarters,
Panaji, Goa.

3. Superintendent of Police,
(N), Porvorim, Goa.

..... Respondents

Ms. Gautami Kakodkar, Advocate holding for Mr. D. Shirodkar, Advocate for the
Petitioner under Legal Aid Services.

Mr. Mahesh Amonkar, Addl. Public Prosecutor for the State-Respondents.

Coram :- **F. M. REIS,**
 K. L. WADANE, JJ.

Date : **7th March, 2016**

JUDGMENT (Per K. L. Wadane, J.)

Heard Ms. G. Kakodkar, learned Counsel appearing for the Petitioner
and Mr. Mahesh Amonkar, learned Addl. Public Prosecutor appearing for the State-
Respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Addl. Public Prosecutor, waives service on behalf of the Respondents.

3. This Writ Petition is filed by the Petitioner for his release on furlough for a period of 28 days. The case of the Petitioner is that he is a life convict and has already completed ten years of his imprisonment and has always maintained good conduct during his confinement in prison. The Petitioner is also physically disabled and suffers from 100% ophthalmic disability (total blindness). The Petitioner had earlier applied for furlough and was released. After completion of the leave period, the Petitioner surrendered himself.

4. By an application dated 26.06.2015 addressed to the Respondent no. 1, the Petitioner applied for release on furlough for 28 days to visit his native place to spend some time with his family. The Petitioner also states that the Respondent no. 1 addressed letter to the Superintendent of Police, Belgaum, with a request to expedite the inquiry and submit the report in terms of Rule 316(2) and (3) of the Goa Prison Rules, 2006. The Respondent no. 1 in both the letters, drew the attention of the Respondent no. 2 and the Superintendent of Police to the directions issued by this Court requiring disposal of such application within eight weeks. On 18.08.2015, the Respondent no. 1, rejected the application on the ground that no police inquiry report has been received by the Respondent no. 1 despite of efforts. According to the Petitioner, the impugned Order is completely with a non-application of mind. The Petitioner's application has been rejected though there is no adverse report from the police. The Petitioner could not have been made to suffer on account of failure by police to submit the report and said application ought

to have been allowed more particularly in view of the fact that there was no adverse report.

5. We have heard Ms. Kakodkar, learned Counsel appearing for the Petitioner and Mr. Amonkar, learned Addl. Public Prosecutor appearing for the State who has no objection to allow the present application. We have perused the record from which it is seen that the Respondent no. 1 issued letter to the concerned Superintendent of Police and its reminder. In spite of such letters, the concerned Police have failed to submit a report to the Respondent no. 1. The furlough application of the Petitioner came to be rejected only on that ground. It is not the case that the report of the Police is adverse against the Petitioner. It also reveals from the record that earlier the Petitioner was released on furlough and he has surrendered within a time with no complaint of committing any other crime. From the record it appears that there was inaction on the part of the concerned police due to which the Petitioner shall not be made to suffer because furlough is the right of the Petitioner rather substantial and legal. The idea of granting furlough to the prisoner, the prisoner should have opportunity to come out and mix with the Society and the prisoner should not be continuously kept in prison for considerable long period. In the present case, the right of the prisoner to be released on furlough leave has been denied due to inaction on the part of the concerned police. Therefore, we are of the opinion, that the Petitioner is entitled to be released on furlough.

6. In view of the above, we pass the following :

ORDER

(I) The impugned Order dated 18.08.2015, passed by the Respondent no. 1 is quashed and set aside.

(II) Shivayya A. Marihal, Prisoner no. 807, at Central Jail Aguada, is held entitled to be released on furlough for a period of 28 days after complying with all the provisions of the Rules and law applicable and subject to the terms and conditions that may be imposed by the concerned authority upon furnishing a personal bond of Rs.10,000/- with one surety in the like amount to the satisfaction of the Superintendent of the Jail.

(III) All other conditions shall be imposed by the concerned authorities in accordance with law.

(IV) Rule is made absolute in the above terms.

(V) Criminal Writ Petition stands disposed of.

K. L. WADANE, J.

F. M. REIS, J.

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