

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1982 OF 2014**

Shaktisingh Jasmatsingh Dudhani .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

....
Ms. Apeksha Vora Advocate appointed for the Petitioner
Mr. H.J. Dedia A.P.P. for the State
....

**CORAM : SMT.V.K.TAHILRAMANI AND
SHRI. M.S.KARNIK, JJ.**

DATED : MAY 02, 2016

ORAL ORDER : [PER SMT. V.K.TAHILRAMANI, J.]:

1 Rule. Rule is made returnable forthwith.

2 The petitioner preferred an application for parole as well as an application for furlough. The said applications came to be rejected. Hence, the petitioner has prayed that he be released on parole or furlough.

3 As far as the prayer for parole is concerned, the

petitioner preferred an application for parole on 13.5.2013 on the ground of illness of his wife. The said application came to be rejected on 2.2.2015. Being aggrieved thereby, the petitioner preferred appeal. The said appeal is pending decision. Hence, we are not inclined to interfere as far as the release on parole is concerned, however, we direct that the appeal of the petitioner in relation to parole be decided as expeditiously as possible and as far as possible within four weeks from the date of communication of this order.

4 As far as furlough is concerned, the petitioner preferred an application for furlough on 22.9.2012. The said application came to be rejected on 4.2.2015. Appeal preferred against the order of rejection was dismissed by order dated 5.10.2015. The petitioner has raised a grievance that there is inordinate delay in deciding his application for furlough, hence, he has sought compensation and has prayed that an action be taken against the officers who are responsible for the same. As far as the aspect of delay is concerned, it is seen that the petitioner preferred an application for furlough on 22.9.2012 which was received by the Superintendent of Kolhapur Central

Prison on 7.10.2012. The said application was forwarded on 9.10.2012 to the D.I.G. (Prisons). In order to decide the application for furlough, police report was necessary. Hence, report was called from the office of Commissioner of Police Thane. The said report was received on 6.12.2012 with remarks that his proposed surety is residing in an illegal structure and therefore, the surety was not found suitable to stand as surety for the petitioner. It was further stated in the report from the office of the Police Commissioner Thane that report of complainant and witnesses be called from Navi Mumbai Police. On receipt of this communication dated 6.12.2012, the Superintendent of Kolhapur Central Prison vide his letter dated 31.12.2012 called for report from Senior Police Inspector of CBD Police Station, Navi Mumbai.

5. Meanwhile, the respondent vide letter dated 2.2.2013 informed the petitioner to furnish a fresh surety as the earlier surety proposed by the petitioner was not found suitable and competent. Accordingly, the petitioner on 18.2.2013 informed the Superintendent, Kolhapur Central Prison that his brother Gulabsing Jasmatsing Dudhani r/o of Ambarnath is ready and

willing to stand as surety. Therefore, on 23.2.2013, Superintendent, Kolhapur Central Prison called for report from Commissioner of Police Thane and Inspector of Police Shivaji Nagar Police Station, Ambarnath. The said report was awaited. Meanwhile, on 24.6.2013 D.I.G. (Prisons) received a letter dated 24.5.2013 from the petitioner praying that he be released on furlough leave on surety of his parents as he is unable to furnish surety other than his parents.

6. On 10.8.2013 petitioner informed the Superintendent, Kolhapur Central Prison that his father Jasmatsing Karamsingh Dudhani residing at Ambarnath is ready and willing to stand as surety. Therefore, on 26.8.2013, Superintendent, Kolhapur Central Prison called for report from Commissioner of Police, Thane and Inspector of Police, Shivaji Nagar Police Station, Ambarnath, Dist. Thane. Since the report was not received, on 18.11.2013 Superintendent, Kolhapur Central Prison sent a reminder calling upon them to submit a report. The said report was received on 9.12.2013 from Senior Inspector of Police (Administration), Crime Branch, Office of Commissioner of Police Thane. The report stated that a charge-sheet under Sections 396, 397, 342 of IPC has been filed against the

petitioner in CR No. 60 of 2009 registered with CBD Police Station, Navi Mumbai and as per Maharashtra Government Notification dated 23.2.2012 Prison Rules 1959 and Sub-Rule 13 of Rule 4, the petitioner is not entitled to furlough leave as the petitioner is involved in a case under Section 396 IPC and it was also stated that a report be called from Navi Mumbai Police.

7. Thereafter, D.I.G. (Prisons) vide his letter dated 14.2.2014 called a report from Superintendent, Kolhapur Central Prison to inform D.I.G. (Prisons) that the petitioner is convicted under which Sections of IPC in the case relating to CR No. 60 of 2009. After verifying the facts on 8.4.2014 Superintendent, Kolhapur Central Prison informed D.I.G. (Prisons) that in the said case the petitioner is convicted only under Section 460 of IPC read with Section 135 of Bombay Police Act and the petitioner is acquitted under Sections 396 and 397 of IPC.

8. D.I.G. (Prisons) on 4.7.2014 informed the Superintendent, Kolhapur Central Prison to call report of complainant and witnesses from CBD Police Station, Belapur, Navi Mumbai and on 17.11.2014 Superintendent, Kolhapur

Central Prison vide his letter, informed the Senior Inspector of Police CBD Police Station, Belapur, Navi Mumbai to submit a report of compliance of CR No. 60 of 2009 in Sessions Case No. 395 of 2009 @ 198 of 2010. Senior Inspector of Police, CBD Police Station, Belapur vide his letter dated 19.12.2014, submitted adverse report stating that if released, on furlough leave, there is serious threat to the life of complainant and witness. The said report was received in the office of the Superintendent, Kolhapur Central Prison on 30.12.2014 and the said report was forwarded to D.I.G. Prisons on 23.1.2015.

9. Thus, it is seen that the petitioner on three occasions submitted a new surety for his release on furlough leave. The delay in deciding the application for furlough was mainly caused on account of the fact that the petitioner on three different occasions proposed a new surety. However, as per the police report, none of the sureties furnished by the petitioner were found to be suitable or competent nor was the police report favourable, hence, the application of the petitioner for release on furlough was rejected on 4.2.2015.

10. As far as apprehension of danger to the lives of complainant and witnesses is concerned, it is seen that there is

no objective material to reach to such a conclusion. Thus, it is seen that only on one ground the application for furlough came to be rejected and delay in deciding the application for furlough was caused on account of the fact that suitable and competent surety was not furnished by the petitioner. Thus, no fault can be found with the authorities for the delay caused in deciding the application of the petitioner for furlough, hence, no case is made out for grant of any compensation or taking any action against the Superintendent of the Prison or D.I.G. (Prisons).

11. In view of the above, we are inclined to release the petitioner on furlough on the condition that he furnishes a suitable and competent surety. If the petitioner furnishes suitable and competent surety, the authorities to release the petitioner on furlough on the usual terms and conditions.

12. Rule is made absolute in above terms.

[SHRI. M.S.KARNIK, J.]

[SMT. V.K.TAHILRAMANI,J.]