

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.255 OF 2016

Khalil Ahmad Sayyed Ali Nazir

...Petitioner

Versus

The State of Maharashtra

...Respondent

Ms A.M.Z. Ansari for the Petitioner.

Mr. A.S. Shitole, A.P.P for Respondent-State.

**CORAM: SMT. V.K. TAHILRAMANI &
SMT. ANUJA PRABHUDESSAI, JJ**

DATED: 21st March, 2016

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

Heard both sides.

2. Rule. By consent Rule is made returnable forthwith.
3. The Petitioner was released on furlough on 11.7.2015 till 25.7.2015. The Petitioner preferred an application for extension of furlough by 14 days on the ground that he was unwell. He has stated that the said application was not decided within a period of 14 days. It was rejected on 7.8.2015 and the Petitioner reported back to the prison on 8.8.2015. Being aggrieved by the fact that his application for extension of furlough was rejected, this petition has been preferred.

4. The Petitioner preferred an application for extension of furlough on the ground that on 15.7.2015 he was suffering from Bacillary dysentery and urinary tract infection and he was under the treatment of Doctor. The police authorities of Raigad police station have verified the medical certificate and they have submitted a report that indeed the health of the Petitioner was not good and he was suffering from urinary tract infection. So also there was blood in his stool. The said report dated 25.7.2015 also states that from the date that the Petitioner was released on furlough he was regularly reporting to the police station and there was no complaint from anyone against the Petitioner. Moreover, during the period that the Petitioner was on furlough he had not committed any offence. The learned counsel for the Petitioner submitted that in view of the medical certificate and the report of the police station, the extension of furlough ought to have been granted.

5. On the other hand the learned APP pointed out that in the year 2015 the Petitioner was released on furlough on 20.1.2015. After the Petitioner was released on furlough on 20.1.2015 he sought extension of furlough, which was granted. Thus, the Petitioner was on furlough leave from 20.1.2015 to 18.2.2015 i.e. for a period of four weeks. The learned APP pointed

out that in view of the Government notification dated 2.12.2003 extension of furlough can be granted to a prisoner only once in a year and as the Petitioner was granted extension of furlough after he was released on 20.1.2015, a second extension of furlough could not be granted.

6. In this view of the matter, we cannot find any fault with the authorities rejecting the application for extension of furlough. However, the learned counsel for the Petitioner submitted that on account of non granting of extension of furlough, the period that the Petitioner was out for 13 days was termed as overstay. Hence, prison punishment of cutting of remission was imposed on the Petitioner and the cash deposit of Rs.20,000/-, which was deposited by the Petitioner prior to being released from furlough was forfeited.

7. Looking to the fact that the police report itself states that the Petitioner was unwell from 15.7.2015 and there was urinary track infection and blood in his stool and looking to the conduct of the Petitioner when he was on furlough leave, we are of the opinion that the prison punishment ought to be set aside. Accordingly, the prison punishment of cutting of remission is set aside. The cash surety amount, which has been forfeited be returned to the Petitioner.

8. Rule is made absolute in above terms.

(SMT. ANUJA PRABHUDESSAI,J.) (SMT. V.K. TAHILRAMANI,J.)