

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

CRIMINAL WRIT PETITION NO.1266 OF 2016

Sumit Prakash Gawali

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

....

Mr. Shailesh D. Chavan, for the Petitioner.

Mr. H.J. Dedia, A.P.P. for the Respondent -State.

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

DATE: 5th May, 2016.

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

Rule. By consent rule is made returnable forthwith.

2. The Petitioner preferred an application for furlough, which was received by the Superintendent of Yerwada Central Prison, Pune, on 19.7.2014. The said application came to be rejected on 6.10.2015. The appeal preferred against the order of rejection came to be dismissed on 3.1.2016, hence, this petition.

3. The order of rejection shows that though the surety, which was proposed by the Petitioner was found suitable and competent however, the application for furlough came to be rejected mainly on the ground that conduct of the Petitioner in jail

was not satisfactory and while in jail the Petitioner was in possession of illegal object.

4. Mr. Kurlekar, Deputy Superintendent of Yerwada Central Prison in his affidavit states that while the Petitioner was in prison, he made phone calls to his sister-in-law - Shalini Gavali and to his Advocate Pramod Harpude. It is the case of the respondents that the Petitioner was in possession of illegal object i.e. a cell phone and from this cell phone he made calls to his sister-in-law and to his Advocate when he was in jail. According to the respondents as calls were made by the petitioner to his Advocate and his sister-in-law from the prison on cell phone which was held illegally, it was felt that the conduct of the petitioner while in jail was not satisfactory. On account of this fact the superintendent of Nashik road Central prison did not recommend release of the petition on furlough.

5. As far as this contention is concerned it is seen that the said cellphone which bore number 8805022873 was not confiscated from the Petitioner while he was in prison, but it was confiscated from prisoner, Deepak Sapke, who was kept in the same barrack as the Petitioner. Calls were made to Advocate Pramod Harpude from this number from 23.11.2012 to 14.7.2013. It is contended on behalf of the respondents that as Pramod

Harpude was the Advocate of the petitioner, the petitioner has made these calls to Advocate Pramod Harpude from this cell phone. However, as far as this aspect is concerned, it is seen that Advocate Pramod Harpude was Advocate of both, Petitioner as well as Deepak Sapke. As there is no audio recording of the calls made to Advocate Pramod Harpude, it cannot be said that it was the petitioner, who made these calls to Advocate Pramod Harpude as Advocate Pramod Harpude was also Advocate of Deepak Sapke. It is possible that Deepak Sapke made the calls to his Advocate Pramod Harpude from said cell phone.

6. It is the case of the respondents that the petitioner while he was in jail made calls to his sister-in-law- Shalini Gavli from cell phone No. 8805022873. These calls were made in the period from 11.8.2013 to 7.9.2013. However, it is an admitted fact as seen from para 10 of the affidavit that the petitioner was released on parole on 16.7.2013 and he surrendered back on his own to the prison after 90 days i.e. on 15.10.2013. The calls were made to Smt. Shalini Gavali, sister-in-law of the petitioner during the period from 11.8.2013 to 7.9.2013. It is seen that the petitioner was not in prison during that period, but he was out on parole. Thus, it cannot be said that it was the petitioner, who made calls to Shalini Gavli from the said cell phone while he was in prison. Thus, we find no merit in this ground.

7. As stated earlier the surety proposed by the petitioner was found competent and suitable. In addition it is seen that the Petitioner was released on parole on 16.7.2013 and he had reported back to the prison in time on his own. Looking to these facts we are inclined to grant furlough to the petitioner. The petitioner to be released on furlough on usual terms and conditions as set out by the jail authorities.

8. Rule is made absolute in above terms.

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