

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2416 OF 2016

Somnath Sudhakar Khude

... Applicant

Vs.

The State of Maharashtra & Ors.

... Respondents

Ms.Mallika Ajay Ingale for the Applicant

Mr.H.J. Dedia, APP, for Respondent - State

CORAM: **SMT. V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.**

DATE: **SEPTEMBER 14, 2016**

ORAL ORDER (PER SMT. V.K. TAHILRAMANI, J.):

1. Heard both sides.
2. Rule. By consent, Rule is made returnable forthwith.
3. The petitioner had preferred an application for furlough on 7.10.2015. The said application was rejected by order dated 29.1.2016. Being aggrieved thereby, the petitioner preferred an appeal. The appeal was dismissed by order dated 30.4.2016, hence, this petition.
4. The application of the petitioner for furlough was rejected on the ground that if the petitioner is released on furlough, he will not report back to the prison. The second ground for rejecting the application for furlough is that the witness in the case in which the petitioner was convicted, i.e.,

C.R. No.22 of 2012, gave a complaint that he was threatened with dire consequences when the accused will come out from prison.

5. The learned Counsel for the petitioner relied on three decisions of this Court. The first decision is in the case of **Sanjay Krishna Kadse vs. State of Maharashtra**¹, wherein it is stated that the only ground on which the furlough leave of the petitioner was refused is adverse police report and there is nothing on record to show that if the petitioner is released on furlough, there is likelihood of conflict between the petitioner and the witnesses and threat to the peace and tranquility in the area. Ms.Ingale submitted that in the case of **Sanjay Krishna Kadse (supra)**, it was observed that in many matters, the authority rejected the application for furlough in routine manner based only on adverse police reports which are submitted on the basis of the statements of witnesses of the opposite side and such orders cannot be sustained. However, in the present case, it is seen that it is not a case of statements of prosecution witnesses only but a complaint has actually been lodged by the witness which is numbered as C.R. No.26 of 2012. This complaint was made on 15.9.2012 i.e., about 3 months after the incident in question. Thus, as stated earlier, besides the statements of prosecution witnesses, there is a complaint on record which shows that threats are being given to the witnesses.

1 2004 (1) Mh.L.J.789

6. Thereafter, reliance was placed on the decision dated 24.6.2003 of a learned Single Judge of this Court (Coram: R.S. Mohite, J.) in the case of **Sagar Punjabrao Kawale vs. State of Maharashtra**². The police had recorded the statements of the witnesses that they were apprehending danger to their lives. Ms.Ingale submitted that in the present case also, the application for furlough came to be rejected on the ground that the witnesses are apprehending danger to their lives. However, on careful perusal of the decision in the case of **Sagar Punjabrao Kawale (supra)**, it is seen that the Court has observed that there does not appear to be any basis for apprehension expressed by the witnesses. In the present case, there is a basis for the apprehension expressed by the authority which is in the nature of a complaint lodged by the witness. Thus, this decision would not be applicable to the facts of the present case.

7. Thereafter, reliance was placed on a decision of this Court in the case of **Sharad Bhiku Marchande vs. State of Maharashtra & Ors.**³ Ms.Ingale placed reliance on this decision to show that the purpose of granting furlough is that the prisoner can get a chance to meet his family.

8. The Supreme Court in the case of **State of Maharashtra & anr. vs. Suresh Pandurang Darvakar**⁴, has observed that release on furlough cannot be said to be an absolute right of the prisoner as culled out from

2 Cri.W.P. No.49 of 2003 decided on 24.6.2003

3 1991 Cr.L.J. 2109

4 AIR 2006 SC 2471

Rule 17. Rule 17 reads as under:

"Nothing in these rules shall be construed as conferring a legal right on a prisoner to claim release on furlough".

9. Furlough is only a facility granted to a prisoner. In the present case, furlough has been rejected on two grounds. One ground is that there is a complaint made by the witness that there is a danger to their lives from the petitioner and his co-accused and the second ground is that the petitioner will not report back to the prison if he is granted furlough. There is enough material to reach this conclusion because it is an admitted fact that the incident in question took place on 8.6.2012. The petitioner was arrested on 5.11.2013 i.e., after almost 1½ years. Thus, it is seen that the petitioner evaded arrest for almost 1½ years. In such case, the apprehension of the authorities that if the petitioner is released on furlough, he will not report back to the prison, cannot be said to be unfounded.

10. Looking to these facts, we are not inclined to grant furlough. The petition is dismissed. Rule is discharged.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)