

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3182 OF 2016

Baba Tukaram Gaikwad

... Petitioner

Vs.

The State of Maharashtra & Ors.

... Respondents

Ms.Harjeet Kaur Bjhagwant Singh, for the Petitioner

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

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

DATE: **SEPTEMBER 29, 2016**

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

1. Heard both sides.
2. Rule. By consent, Rule is made returnable forthwith.
3. The petitioner preferred an application for furlough on 31.1.2016. The said application came to be rejected by order dated 31.3.2016. Being aggrieved thereby, the petitioner preferred an appeal. The appeal was dismissed by order dated 18.6.2016, hence, this petition.
4. The application of the petitioner for furlough came to be rejected mainly on the ground that on 1.12.2009, the petitioner was released on parole for a period of 30 days. The petitioner did not report back to the prison in time and there was overstay of 61 days. On 13.4.2011, when the

petitioner was released on furlough for 14 days, he did not report back to the prison in time and there was overstay on his part of 32 days in reporting back to the prison. Despite the fact that twice there was overstay on the part of the petitioner on 14.11.2012, the petitioner was released on parole for a period of 30 days and the said period was extended by a period of 60 days. Despite the fact that the parole period was extended and the petitioner was granted parole for a total period of 90 days, the petitioner did not report back to the prison in time and he absconded. The petitioner had to be ultimately traced and arrested by the police and brought back to the prison. There was overstay of 133 days. In view of these facts, it was apprehended that if the petitioner is again released on furlough, he will not report back to the prison in time. Looking to the past conduct of the petitioner, it cannot be said that the apprehension of the authorities is unfounded.

5. Reliance was placed on a decision of a learned Single Judge of this Court in the case of Santosh vs. Superintendent, Central Prison, Amravati¹. In the said decision, it was held that prisoners as of right are entitled to furlough leave on furnishing appropriate and competent surety and application for furlough cannot be rejected on the ground that the prisoner had surrendered late in the past especially when punishment was imposed on the prisoner by way of deducting remission in the ratio of 1:5.

1 2003 (4) Mh.L.J. 349

6. First of all, the decision in the case of Santosh vs. Superintendent, Central Prison, Amravati (supra) has been rendered by a Single Judge this Division Bench would not be bound by the said judgment. Even otherwise, the Supreme Court in the case of State of Maharashtra vs. Suresh Pandurang Darvakar², has observed “ but release on furlough cannot be said to be an absolute right of the prisoner as culled out from Rule 17”. Rule 17 reads as under:

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

7. We are bound by the decision of the Supreme Court. The Supreme Court has clearly stated that a prisoner is not entitled to furlough leave as of right. It is seen that the petitioner time and again, has abused the privilege granted to him of being released on parole or furlough. Despite the fact that on two occasions, he had overstayed, on the 3rd occasion i.e., on 15.11.2012, the petitioner was released on parole. He was initially granted parole for 30 days which period was extended by another 60 days. After 90 days, the petitioner ought to have surrendered to the prison. However, the petitioner absconded as stated above. He was ultimately traced and arrested by the police and brought back to the prison. Looking to this conduct of the petitioner, we are not inclined to

2 AIR 2006 SC 2471

interfere. However, if the petitioner prefers a fresh application, the same to be considered by the authorities on merits.

8. Rule is discharged accordingly.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)