

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.44 OF 2017

Shivaji s/o.Nagorao Shinde,
Age: Major, Convict No.9663,
Lodged at Nashik Road Central Prison,
Nashik, Dist. Nashik. **PETITIONER**

VERSUS

1. The State of Maharashtra
2. Dy. Inspector General (Prison),
Central Region, Aurangabad.
3. Inspector General (Prison),
Pune, Maharashtra State.
4. Superintendent of Jail,
Nashik Road Central Prison,
Nashik.
5. The Superintendent of Police,
Hingoli, Dist. Hingoli. **RESPONDENTS**

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Mr.Shaikh Wajeed Ahmed [Appointed] Advocate
for the Petitioner
Mr.S.P.Deshmukh, APP for the Respondent Nos.1
to 5/State

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 01.03.2017
Pronounced on : 03.03.2017

JUDGMENT: (Per S.S.Shinde, J.):

1. Heard. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

2. This Petition is filed seeking modification of the condition no.1 in order dated 06.10.2016 passed by the DIG (Prison), Aurangabad, asking the petitioner to furnish two sureties and issue directions to respondents to release the petitioner on furnishing one surety instead of two sureties.

3. It is the case of the petitioner that, the petitioner was arrested on 15th June, 2008. Thereafter, after trial he was convicted for the offence punishable under Section 302 of the Indian Penal Code, thereby sentencing him to undergo life imprisonment and continuously he is in Jail since his arrest.

4. On 9th May, 2016, he applied for furlough leave before the sanctioning Authority through the Superintendent, Nashik Road Central Prison, Nashik. His prayer to release him on furlough leave was favourably considered by the concerned Authority, and the said authority granted 28 days furlough leave to the petitioner by imposing certain conditions including furnishing of two sureties by the petitioner. The petitioner requested the Jail Authority to release him upon furnishing one surety instead of two sureties, however, his request has been rejected. Hence this Petition.

5. It is submitted by the learned counsel appearing for the petitioner that, the right of a convict to release on furlough cannot be denied by putting such stringent conditions. Furthermore, already the petitioner had undergone more than 8 years of imprisonment. Though the petitioner is

granted furlough leave, he is unable to furnish two sureties for his release. However, he has managed one surety and ready to furnish the same. So also the petitioner is indigent person as his financial condition is not good and due to his inability to secure 2nd surety, his right to be released on furlough is frustrated. If the petitioner is not released on furlough leave on furnishing one surety, then the entire object behind having the provision of Furlough leave for the prisoners would get frustrated. Moreover, imposition of such strict conditions to furnish two sureties would make it impossible for the prisoners to maintain the constructive hopes and active interest in life. Hence, the Jail Authority should have considered the grievance of the petitioner by allowing him to furnish one surety instead of insisting him to furnish two sureties for his release on furlough.

6. Pursuant to the notices issued to the respondents, respondent nos.1 to 4 have filed affidavit-in-reply, fact that 28 days furlough leave subject to condition to furnish two sureties is granted in favour of the petitioner is not in dispute. It appears that in the process of considering the prayer of the petitioner to release him on furlough leave, the Deputy Inspector General (Prison), Central Region, Aurangabad, has mentioned that, earlier when the petitioner was released on furlough leave, he quarreled with the people under the influence of liquor and due to such adverse police report, the petitioner's request was not considered. It is stated in the affidavit-in-reply that, the petitioner has undergone the sentenced of 8 years, 5 months and 16 days till filing of the affidavit-in-reply. He was granted furlough leave on 27th August, 2012 and after availing the said furlough leave, he reported

back to the Jail on 10th September, 2012, within time. Again he was released on parole leave on 27th June, 2013, and he reported 16 days late, and therefore, 48 days remission has been cut/deducted.

7. Upon hearing the learned counsel appearing for the petitioner and the learned APP appearing for the respondent—State and upon perusal of the grounds taken in the petition, annexures thereto and the affidavit-in- reply filed by the respondents, we are of the opinion that, since the respondent authority thought it fit to accept the prayer of the petitioner to release him on furlough leave for 28 days, merely because he cannot furnish two sureties, can not be a ground to deny him furlough leave. The petitioner is ready to furnish one surety, and therefore, in our opinion keeping in view the fact that, the petitioner has undergone more than 8 years sentence and on his own he

reported back to the Jail when he was earlier released on furlough / parole leave.

8. We are inclined to allow the Petition in terms of prayer clause-B, which reads thus:

B. By issuing appropriate Writ, direction or order in the Like nature Quash and Set aside the Condition No.1 in order dt. 06/10/2016 passed by the DIG (Prison), Aurangabad to the extent of furnishing two sureties by the Petitioner and further direction may kindly be given to the Respondents to allow the Petitioner to submit One Surety instead of two sureties.

9. Accordingly, we direct the respondents to release the petitioner on furnishing one surety subject to completing usual formalities, if any. The Criminal Writ Petition is allowed in terms of prayer clause-B. Rule is made absolute on above

terms and the Writ Petition stands disposed of accordingly.

10. The learned APP to communicate this order to the respondents by the fastest mode of communication.

11. Since, Mr.Shaikh Wajeed Ahmed, the learned counsel is appointed to prosecute the cause of the petitioner, his fees be paid as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

DDC