

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

CRIMINAL WRIT PETITION NO.784 OF 2017

Mahadev @ Mahadu Narayan Kale,
Age: Major, Occ. Convict No.C/8251
R/o. At Nashik Road Central Prison,
Nashik. **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through Principal Secretary,
Home Department, Mantralaya,
Mumbai.
2. The Superintendent,
Nashik Road Central Prison,
Nashik.
3. The Deputy Inspector General [Prison]
Central Prison, Harsool, Aurangabad.
4. The Maharashtra Prison Department,
Additional Director General of Police
and Inspector General of Prison
& Correctional Services, Pune-1.

RESPONDENTS

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Mrs.Almas Abdul Quadar, Advocate for the
petitioner

Ms.S.S.Raut, APP for the Respondent/State

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**CORAM: S.S.SHINDE &
S.M.GAVHANE,JJ.**

Reserved on : 26.07.2017
Pronounced on : 02.08.2017

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

1. Heard.

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

3. It is the case of the petitioner that the petitioner is a convict; he is undergoing life imprisonment at Nashik Road Central Prison, Nashik. The Sessions Court has convicted the petitioner for the offences punishable under Sections 302, 307, 323 and 504 of the Indian Penal Code on 23rd April, 2010. Since then the petitioner is in prison at Nashik Road Central Prison, Nashik.

4. It is further the case of the petitioner that during period of imprisonment, the petitioner has availed of parole only, and he never applied for furlough leave. For the first time, the petitioner applied for the furlough leave,

however, application was rejected by order dated 16th November, 2016, by the respondent no.2. Thereafter, the Appellate Authority i.e. respondent no.4, dismissed his appeal by order dated 31.01.2017, on three grounds viz. (1) adverse police report received from Manwat Police Station, the Police Inspector has not recommended furlough leave to the petitioner, (2) unsatisfactory conduct, and (3) on two occasions, when the petitioner was on parole leave, he failed to report the jail authorities within time.

5. It is further the case of the petitioner that at the time of applying for furlough leave, the petitioner promised not to repeat such mistakes like observed in the impugned order in future. The petitioner is ready to abide by the terms and conditions as would be imposed by the respondents-authorities in case of his release on furlough.

6. Learned counsel appearing for the petitioner submits that the orders passed by respondent nos.3 and 4 are not legally sustainable, and same deserves to be quashed and set aside. The petitioner is entitled for furlough leave as a matter of right. When the petitioner was released on parole on earlier occasion, he reported back to jail authorities after 43 days from the date of expiry of period for which he was released on parole. However, he was punished by the authorities by deducting 129 days from the remission available to the petitioner. Therefore, the learned counsel appearing for the petitioner submits that the Petition may be allowed.

7. On the other hand, the learned APP appearing for the respondent – State, relying upon the affidavit-in-reply, made following submissions:

8. Initially, the petitioner was

released on parole on 2nd August, 2011, for a period of 30 days. The petitioner overstayed for 43 days before surrendering himself. The disciplinary action under the Prisons Act was taken against him and his remission period of 129 was curtailed from the total remission earned. Further again on 3rd December, 2012, he was released on parole for 30 days and overstayed for 570 days. Subsequently, he was arrested by the police and handed over to the prison authorities on 27th July, 2014. A criminal case came to be registered against the petitioner vide Crime No.85/2014 under Section 224 of the Indian Penal Code at Manwat Police Station and further his name has been permanently deleted from the remission register due to violation of the prison Rules and Regulations, as per Government Resolution dated 2nd August, 2011. It is submitted that the Police Inspector, Manwat Police Station had forwarded adverse

police report vide letter bearing O.W.NO. 1390/4810 dated 29th August, 2016, regarding furlough leave of the petitioner. The Police Inspector, Manwat Police Station had not recommended the leave of the petitioner on the following grounds:

[a] That there is possibility of breach of public peace if he is released on leave.

[b] That there is threat to the life of the relatives of the informant and witnesses, who have deposed against him during the trial.

[c] The guarantor Shri Vishnu Narayan Kale appears to be incapable to take control of the prisoner during his leave period.

[d] There are possibilities that the prisoner will not surrender before

the prison authorities on completion of leave as previously when he was released on parole leave he did not surrender on time.

9. It is further submitted that the Deputy Inspector General of Prisons, Central Region, Aurangabad, vide order No.161 dated 4th January, 2017, had rejected the furlough leave application of the petitioner under the Prisons [Mumbai Furlough and Parole] Rules, 1959 [for short 'Rules, 1959'], Rule 4 [4], 4 [6] and 4 [10] on the adverse grounds as mentioned in the police report. Thereafter, the petitioner had filed an appeal on 28th November, 2016, against the said order of the Deputy Inspector General of Prisons, Central Region, Aurangabad, before the Additional Director General of Police and Inspector General [Prisons], Pune-1. The Appellate Authority, on considering the entire facts of the case, has rejected the

appeal on the similar grounds as mentioned above, vide its order No.1005 dated 31st January, 2017. Hence, the petitioner has filed the present Writ Petition on 17th March, 2017 before this Court. Therefore, the learned APP submits that the Petition may be dismissed.

10. We have considered the submissions of the learned counsel appearing for the petitioner, and the learned APP appearing for the respondent-State. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, reply filed by the respondents, and also the Rules, 1959, and also the reasons assigned by the respondent no.3 in the impugned order. Upon careful perusal of the reasons assigned in the impugned order, it appears that, the police report received from the Police Inspector, Manwat Police Station, is adverse, and the Superintendent of Police, Parbhani

has not recommended the case of the petitioner to release him on furlough. Upon careful perusal of the reply filed by the respondents, it appears that, the petitioner was released on parole in the past, and he did not report to the jail authorities within the period for which he was released on parole. It appears that, in the year 2012, when the petitioner was released on parole, he did not report back after availing of parole within time. He overstayed more than 570 days. Therefore, the offence was registered against him under Section 224 of the IPC. Thereafter, he was arrested and was brought back to the jail to undergo remaining sentence. It appears that his name is also struck down from the convicts, who are entitled for the remission.

11. In that view of the matter, in our opinion, the reasons assigned in the impugned order are keeping in view the past record of

the petitioner, and also the relevant Rules. Therefore, we are not inclined to exercise discretion in favour of the petitioner. For the reasons aforesaid, the Petition stands rejected. Rule stands discharged. We make it clear that rejection of this Petition may not be construed as an impediment to the petitioner to apply in future for furlough or parole as the case may be.

12. Since Mrs.Almas Abdul Qadar, the learned counsel is appointed to prosecute the cause of the petitioner, she would be entitled for the fees, as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

[S . M . G A V H A N E]
JUDGE

[S . S . S H I N D E]
JUDGE