

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1010 OF 2017

Shivaji s/o Ganeshrao Jawale,
Age-Major, Occu:Prisoner,
Presently Prisoner Convict No.10929,
Nashik Road Central Prison,
Nashik.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
- 2) The Additional Director
General of Police and
Inspector General Prison
and Correction Service,
M.S. Pune-1,
- 3) The Deputy Inspector General,
Central Prison, Harsool,
Aurangabad,

...RESPONDENTS

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Ms. Varsha M. Bhagwat Advocate appointed for
Petitioner.

Mr. A.B. Girase Public Prosecutor for
Respondent Nos.1 to 3.

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**CORAM: S.S. SHINDE AND
MANGESH S. PATIL, JJ.**

DATE OF RESERVING JUDGMENT : 10TH OCTOBER, 2017.

DATE OF PRONOUNCING JUDGMENT: 13TH OCTOBER, 2017.

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition takes exception to the order dated 3rd April, 2017 passed by the Deputy Inspector General of Prisons, Central Region, Aurangabad, thereby rejecting the request of the Petitioner to release him on furlough.

3. It is the case of the Petitioner herein that he applied for furlough, however, by the impugned order his application has been rejected. In the impugned order it is observed that, as the appeal filed by the Petitioner challenging the conviction and sentence is pending before the High Court, in view of the Notification dated 26th

August, 2016 issued by the Home Department, State of Maharashtra, furlough cannot be granted. Secondly, furlough cannot be granted to the Petitioner in view of the order passed by the High Court in Writ Petition No.4017 of 2016 (Smt. Rubina Suleman Memon vs. The State of Maharashtra and others). Thirdly, furlough is not the right of the convict. Accordingly, by invoking the provisions of Rule 4(11) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short "the Rules of 1959"), the application of the Petitioner has been rejected.

4. There is no dispute that the police report forwarded by the Superintendent of Police, Parbhani is favourable to the Petitioner. Learned counsel appearing for the Petitioner submits that, merely because appeal filed by the Petitioner against conviction and sentence is pending, is no ground to deny him the furlough in view of the orders passed by the Division Bench of the Bombay

High Court, Bench at Nagpur, in Criminal Writ Petition No.196 of 2017 and Criminal Writ Petition No.97 of 2017 [Arun s/o Gulab Gawli and another vs. D.I.G.(Prisons) (East) Nagpur and another], and Criminal Writ Petition No.462 of 2017 [Abdul Rajjak Sheikh Abdul Nabi Shah vs. Divisional Commissioner, Nagpur and others]. It is further submitted that the ratio in the case of Smt. Rubina Suleman Memon, supra, is not applicable in the facts of the present case, in as much as the Petitioner therein was convict under the Terrorist and Destructive Activities Act, 1987 (for short "TADA Act") and wife of brother of Yakub Abdul Razak Menon. The Petitioner herein is not convict of the offence punishable under the provisions of TADA Act. Therefore, learned counsel submits that the Petition deserves to be allowed.

5. Learned Public Prosecutor relying upon the affidavit-in-reply filed by the Superintendent, Nashik Road Central Prison, Nashik

and also the relevant rules submits that, the Petitioner's prayer to release him on furlough leave has been rightly turned down. He further invites our attention to the reasons assigned by the Respondent Authority while rejecting the application of the Petitioner to release him on furlough leave.

6. We have given careful consideration to the submissions of the learned counsel appearing for the Petitioner and learned A.P.P. appearing for the State. While rejecting the application of the Petitioner to release him on furlough, the Respondent Authorities have placed reliance on Rule 4(11) of the Rules of 1959. Rule 4(11) of the Prisons (Bombay Furlough and Parole) Rules, 1959, amended as per the Notification dated 26th August, 2016, reads as under:

"(11) Whose appeal in conviction in Higher Court or any other cases filed against them either by Central Government or any of the

State Government in any of the Courts are pending and for which bail is not granted to him/her by the related Courts."

7. We have carefully considered the provisions of Rule 4(11) of the Rules of 1959. Merely because appeal filed by the Petitioner challenging his conviction and sentence is pending before the High Court is no ground to deny the parole/furlough in view of the orders passed by the Division Bench of the Bombay High Court, Bench at Nagpur in Criminal Writ Petition No.196 of 2017 and Criminal Writ Petition No.97 of 2017 [Arun s/o Gulab Gawli and another vs. D.I.G.(Prisons) (East) Nagpur and another], and Criminal Writ Petition No.462 of 2017 [Abdul Rajjak Sheikh Abdul Nabi Shah vs. Divisional Commissioner, Nagpur and others], supra.

8. As rightly contended by learned counsel appearing for the Petitioner, the ratio in the case of Smt. Rubina Suleman Memon, supra, is not

applicable in the facts of the present case, in as much as the Petitioner therein was convict under the Terrorist and Destructive Activities Act, 1987. However, the Petitioner is not convicted under said Act.

9. For the reasons afore-stated, in our opinion, the Petition deserves to be allowed. Accordingly, the Writ Petition is allowed in terms of prayer clause "B)" and "C)". We direct the Respondents to release the Petitioner forthwith on furlough, after completion of usual procedural formalities, without raising the reasons mentioned in the impugned order.

. Rule made absolute on above terms.

10. The Writ Petition stands disposed of, accordingly.

11. We appreciate the sincere efforts taken

by learned counsel Ms. Varsha Bhagwat in promptly preparing the memo of the Petition, filing the same within time and extending able assistance during the course of hearing of the Petition so as to reach to the correct conclusion. Since Ms. Varsha Bhagwat, learned counsel is appointed to prosecute the cause of the petitioner, her fees be paid as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

[MANGESH S. PATIL, J.]

asb/OCT17

[S.S. SHINDE, J.]