

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1015 OF 2017

Shri Rajesh Bhikaji Gade,
Age-Major, Occu:Nil,
R/o-Circle No.4/1,
Nashik Road Central Prison,
Tq. & Dist-Nashik,
Presently, Prisoner No.10429,
Central Prison, Nashik.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai-400 032,
- 2) Inspector General of Prisons,
Maharashtra State, Pune-1,
- 3) The Deputy Inspector General of Prisons,
Aurangabad Division,
Dist-Aurangabad,
- 4) The Superintendent Police,
Central Prison, Nashik.

...RESPONDENTS

...

Mr. Y.D. Kale Advocate appointed for
Petitioner.

Mr. A.B. Girase, Public Prosecutor for
Respondent Nos.1 to 4.

...

**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 9th May, 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 firstly 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, it is mentioned in the impugned order that the report submitted by the Additional Superintendent of Police, Sub-Division, Ambajogai, is adverse stating that if the Petitioner is released on furlough there may be danger to the life of the informant and also to the witnesses. Accordingly, by invoking the provisions of Rule 4(4) and 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. 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]. Learned counsel further submits that the ratio in the case of Smt. Rubina Suleman Memon, supra, is not applicable in the facts of the present case, as the Petitioner therein was convict under the Terrorist and Destructive Activities Act, 1987 and wife of brother of Yakub Abdul Razak Menon. Learned counsel invited our attention to the adverse police report and submitted that the same cannot be taken into

consideration as the same is too general in nature. Therefore, it is submitted 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 and the reasons stated in the report received from the Additional Superintendent of Police, Sub-Division, Ambajogai, submits that Petitioner's prayer to release him on furlough leave has been rightly turned down in view of the reasons stated in the police report. 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 him 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 convict under the said Act.

9. In the light of above, the impugned order

is quashed and set aside. The Petitioner to apply afresh within TWO WEEKS with Respondent authorities requesting to release him on furlough. After receipt of such application, we direct the Respondent Authorities to call fresh police report within TWO WEEKS thereafter, and decide the application of the Petitioner as expeditiously as possible, however within TWO WEEKS from the date of receipt of police report, without raising the same objections/grounds raised in the impugned order.

10. Rule made absolute in above terms. The Writ Petition stands disposed of, accordingly.

11. We appreciate the sincere efforts taken by learned counsel Mr. Y.D. Kale 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 Mr.

Y.D. Kale, 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.

[MANGESH S. PATIL, J.]

asb/OCT17

[S.S. SHINDE, J.]