

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1104 OF 2017

Dinesh s/o Sahebrao Kadam,
(C-7576),
Central Prison, Aurangabad

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through D.I.G. Prisons,
Aurangabad,
- 2) The State of Maharashtra,
Through Superintendent,
Central Prison, Aurangabad.

...RESPONDENTS

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Mr. Rupesh A. Jaiswal Advocate appointed for
Petitioner.

Mr. A.B. Girase, Public Prosecutor for
Respondent Nos.1 and 2.

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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 20th 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 it is observed that, the Petitioner filed application for furlough after 26th August, 2016. 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, 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. Fourthly, furlough is not the right of the convict. Accordingly, by invoking the provisions of Rule 4(11) of Chapter 37 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 denial to the assertion of the Petitioner that the Petitioner was earlier released on parole and furlough four times each, and on each occasion the Petitioner reported back to the jail authorities within time. Learned counsel for the Petitioner submits that earlier when the Petitioner was released on parole/furlough, he did not misuse the liberty

granted to him. It is submitted 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 further submitted 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].

5. Learned Public Prosecutor, referring to the relevant rules submits that, the prayer of the

Petitioner to release him on furlough has been rightly turned down in view of the reasons stated in the police report. Learned Public Prosecutor 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. 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, and the Petitioner is not convict under the said Act.

7. 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."

8. 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.

9. In the light of above, the impugned order is quashed and set aside. We direct the Respondents to examine entire earlier record of the case of the Petitioner and release the Petitioner on furlough, if otherwise he is eligible for the same, after completion of usual procedural formalities, and shall not deny the same on the grounds/objections mentioned in the impugned order.

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

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]

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