

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

CRIMINAL WRIT PETITION NO.1191 OF 2017

Krushna Dnyaneshwar Satpute (C-8219),
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.
3. The State of Maharashtra,
Through I.G., Prisons,
Pune. ... **Respondents**

...
Mr. R.A.Jaiswal, Advocate for Petitioner
Mr. A.R.Kale, APP for Respondents - State
...

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

**RESERVED ON : 31st October, 2017
PRONOUNCED ON : 3rd November, 2017**

JUDGMENT : (Per Mangesh S. Patil, J.) :-

Rule. The Rule is made returnable forthwith.
Heard finally by consent of learned advocates for the

parties.

2. This is a petition impugning the orders passed by the Respondents rejecting petitioner's application for Furlough Leave.

3. The petitioner, who is suffering imprisonment for seven years for the offence punishable under Section 304 of the Indian Penal Code, applied for Furlough Leave. However, his request was rejected by Respondent No.2 by the order dated 12.01.2017 and the appeal preferred by him has been rejected on 09.05.2017 by Respondent No.1. As is apparent from the impugned orders, the Furlough Leave has been refused on the ground that there is an adverse report by police, the surety does not possess any immovable property and the petitioner is likely to threaten the original complainant and witnesses if released on Furlough Leave.

4. We have heard the learned Advocate for the petitioner and the learned APP. We have also perused the papers filed along with the petition and also the

affidavit-in-reply and the documents annexed thereof. It is necessary to note that there is no dispute that barring the grounds mentioned in the impugned orders, the petitioner is otherwise eligible to be released on Furlough Leave under Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959. It is, therefore, necessary to consider whether the grounds on which the Furlough Leave has been refused have any basis and are justified.

5. Primarily the objection is that there is an adverse police report. However, time and again it has been laid down that such adverse police report should come out with some concrete material to enable the Court to ascertain if really the apprehension entertained by the police is justified or not. Suffice for the purpose to refer to the recent decision of the Division Bench of this Court to which one of us (Shri.S.S.Shinde, J.) was a party in the case of ***Kisan Soma Rathod Vs. The State of Maharashtra [2017 ALL MR (Cri.) 3561]***. The apprehension expressed by the police without any basis

cannot be a ground to refuse furlough / parole. There is absolutely no material placed on the record as to what are the reasons which weighed with police in submitting the so called negative report. One cannot make out even from the two impugned orders as to what exactly the police had reported. Reference to such adverse police report in both the orders is vague and cursory.

6. Similarly is the case with the apprehension being expressed by the present authorities as regards the likelihood of the petitioner threatening the original complainant and the witnesses. Barring a bald statement in the impugned orders, there is absolutely no record to justify this apprehension. There is no material to show that statements of the persons are recorded by police and any independent inquiry is conducted to draw such inference that the petitioner's liberty would come in the way of safety of the complainant and the witnesses. Infact even in the impugned orders only a likelihood is expressed of petitioner's threatening the complainant and the witnesses. It is thus apparent that primarily the main

reasons for rejection of Furlough Leave to the petitioner are not sustainable on facts and in law.

7. Under these circumstances, we are satisfied that the petitioner ought to have been released on Furlough Leave and there was no justifiable ground to refuse it. The impugned orders are not sustainable in law and deserves to be set aside.

8. The petition, therefore, deserves to be allowed in terms of prayer clause 'B'. The Petition is allowed. The rule is accordingly made absolute in prayer clause 'B'.

(MANGESH S. PATIL, J.)

(S.S.SHINDE, J.)

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vmk/-