

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1232 OF 2017

Roshan alias Chini Danichand Thakur,
Convict No.9539,
Age-Major, Occu:Nil,
R/o-Nashik Road Central Prison,
Nashik.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Home Department,
Through its Chief Secretary,
- 2) Inspector General of Prisons,
Mumbai, Maharashtra,
- 3) Deputy Inspector General of Prisons,
Central Region, Aurangabad,
- 4) Superintendent,
Nashik Road Central Prison,
Nashik.

...RESPONDENTS

...

Ms. Nihareeka S. Godsay Advocate appointed for
Petitioner.

Mrs. P.V. Diggikar, A.P.P. 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 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 report given by the Deputy Superintendent of Police, Palghar is adverse. Secondly, if the Petitioner is released on furlough there may be danger to the life of the family members of the informant and also the witnesses. 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 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). Accordingly, by invoking the provisions of Rule 4(4), 4(11) and 4(17) 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 twice on parole and once on furlough and there was no harm caused by the Petitioner's presence in the society. 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, 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. Learned counsel further submitted that merely because appeal against conviction and sentence is pending, is no ground to deny 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 A.P.P., referring to the relevant rules and the reasons stated in the report received from the Deputy Superintendent of Police, Palghar, 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 A.P.P. further invites our attention to the reasons assigned by the Respondent Authority while rejecting the application of the Petitioner to release him on furlough.

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 record shows that earlier when the Petitioner was released on parole/furlough, he did not misuse the said liberty granted to him and also reported back to the jail within time. Secondly, 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 TADA Act. However, the Petitioner herein is not convict under 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. 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)". We direct the Respondents to release the Petitioner on furlough, after completion of usual procedural formalities, and shall not deny the same on the grounds mentioned in the impugned order.

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

11. We appreciate the sincere efforts taken by learned counsel Ms. Nihareeka Godsay 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. Nihareeka Godsay, 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.]