

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

CRIMINAL WRIT PETITION NO.1293 OF 2017

Jafar s/o.Abdul Haq Shaikh
Age-56 Years, Occ: Prisoner,
Convict No.C-7682
Central Prison, Harsul
Aurangabad.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Inspector General of Police [Prison]
Maharashtra State, Pune.
3. The Deputy Inspector General of
Police [Prison],
Central Prison, Harsul
Aurangabad.
4. The Superintendent of Prison,
Central Prison, Harsul,
Aurangabad.

RESPONDENTS

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Mr.M.M.Chaudhari, Advocate for the Petitioner
Mrs.P.V.Diggikar, APP for the
Respondent/State

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

Reserved on : 20.11.2017
Pronounced on : 24.11.2017

JUDGMENT: (Per S.S.Shinde, J.):

1] Heard.

2] Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3] This Petition is filed with the following prayer:

C) To quash and set-aside the Judgment and order passed by respondent No.3 dated. 15/2/2017 and Judgment and order passed by respondent No.2 dated.19/8/2017 refusing furlough to the petitioner.

4] Learned counsel appearing for the petitioner invites our attention to the pleadings and grounds taken in the Petition, annexures thereto and submits that, though the petitioner is convicted for the offence punishable under Section 302 of the Indian

Penal Code and he is a convict in a bomb blast case, nevertheless as and when he was released on furlough / parole, he has reported back to the jail on his own within time. It is submitted that the petitioner's case stands on different footing vis-a-vis other co-accused in a bomb blast case, inasmuch as the petitioner is not a convict under the Terrorist and Disruptive Activities [Prevention] Act, 1987 [for short 'TADA']. He invites our attention to the contents of the letter written by the Assistant Police Commissioner, Samata Nagar, Region Mumbai addressed to the Deputy Inspector General of Prisons, Central Region, Aurangabad, dated 29.12.2016 and submits that the said Officer, after recording the statement of adjoining residents where the petitioner's daughter is residing, has recorded satisfaction that the daughter of the petitioner is ready to stand as surety. Whenever on earlier occasion the

petitioner was released on furlough/parole, he did not misuse the liberty or misbehave and reported back to the jail within time. It is submitted that merely because the appeal filed by the petitioner is pending before the Supreme Court, challenging his conviction is no ground to reject his application for furlough. In support of his aforesaid contentions he placed reliance on the reported judgment of the Division Bench at Principal Seat [Coram : Smt.V.K.Tahilramani & Sandeep K.Shinde, JJ.] in Criminal Writ Petition No.2027/2017, decided on 21.06.2017 and the Supreme Court judgment in the case of the **Asfaq Vs. State of Rajasthan** in Civil Appeal No.10464 of 2017, decided on September 11, 2017. Therefore, he submits that, the Petition deserves to be allowed.

5] On the other hand, learned APP appearing for the respondent-State, relying

upon the affidavit-in-reply filed by one Shri Bapurao s/o.Ramrao More, working as Superintendent, Aurangabad Central Prison, Aurangabad, submits that, the impugned order is passed by the Deputy Inspector General [Prison], Central Region, Aurangabad on 15.02.2017, considering the report submitted by the Assistant Police Commissioner, Bombay, dated 29.12.2016 as the accused/petitioner is convicted in Sessions Case No.643, 643-A/1135/1998 and he is undergoing imprisonment in Central Prison, Aurangabad. It is submitted that the present petitioner preferred an appeal before the Additional Director General of Prison, Pune and the said authority confirmed the decision. While rejecting the prayer of the petitioner, the said Authority has considered the provisions of Maharashtra Prison Manual, 1979 Chapter-37 [Furlough and Parole] Rules, 4 [4] and Government Resolution dated 26.08.2016. The

authorities observed in the order that in view of the Government Resolution in para 3 [b] [13], if the convict, who is sentenced for offence as such dacoity, terrorist crimes, mutiny against State, kidnapping for ransom, smuggling of narcotic or psychotropic substances, rape or rape with murder in that case furlough cannot be granted. In the present case, the petitioner is convict of an offence related to the terrorist crimes, therefore, the authority has rightly rejected the application of the present petitioner. It is submitted that as per the report it reveals that, on one occasion petitioner was released on furlough, and he reported to the prison within time. On three occasions the petitioner was released on parole, and he returned back to the prison within time. As per the amendment presently carried out by the State of Maharashtra in Prison Manual, the present petitioner is not entitled for

furlough / parole as he is a convict related to the terrorist crimes, therefore, the authority has rightly rejected his application.

6] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner and the learned APP appearing for the respondent-State. We have carefully perused the impugned order, it appears that the main ground on which the application of the petitioner is rejected appears to be that the Government of Maharashtra, Department of Home, issued a Notification dated 26th August, 2016, merely because in view of the said Notification and since the petitioner is a convict in a bomb Blast case, no parole/furlough can be granted to him. In this respect, it would be gainful to make reference to the order passed by the Division Bench at Principal Seat [Coram : Smt.V.K.Tahilramani & Sandeep K.Shinde, JJ.]

in Criminal Writ Petition No.2027/2017, decided on 21.06.2017, wherein the petitioner was a convict in a case relating to the bomb blast and it was mentioned in the police report that if the petitioner is released on parole, he will not report back to the prison. However, keeping in view the earlier record of the petitioner therein, in respect of his release on parole/furlough and the fact that the petitioner therein did not misuse the liberty given to him, and reported back within time to the prison, the Division Bench issued directions to release the petitioner therein for a period of 30 days on parole.

7] In the facts of the present case, as it is evident from the reply filed by respondent no.2 that, as and when the petitioner was released on furlough / parole, he reported back to the jail within time. He did not misuse the liberty granted to him as

it is evident from the report submitted by the Assistant Police Commissioner, Samata Nagar, Region Mumbai addressed to the Deputy Inspector General of Prisons, Central Region, Aurangabad. It is true that the petitioner is convicted for the offence punishable under Section 302 of the Indian Penal Code in a bomb blast case. However, the respondents have not disputed assertion of the petitioner that he is not convict for the offence under TADA.

8] In that view of the matter, keeping in view the earlier record of the petitioner that as and when he was released on parole/furlough, he reported back to the jail within time and he did not misuse the liberty granted to him and also his daughter is ready to stand as surety, prayer of the petitioner to release him on furlough deserves consideration.

9] So far as ground raised by the respondents that the petitioner's appeal against conviction and sentence is pending before the Supreme court is concerned, in a similar set of facts, the Division Bench [Coram: B.P.Dharmadhikari & V.M. Deshpande,JJ.] in Criminal Writ Petition [CWP] No.196/2017 [Arun s/o.Gulab Gawli & another Vs. State of Maharashtra & others] with Criminal Writ Petition [CWP] No.97/2017, decided on 26th April, 2017, has observed that merely because appeal is pending, is no ground for not considering the request of the convict to release him on parole/furlough as the case may be. In the recent judgment of the Supreme Court in the case of the **Asfaq Vs. State of Rajasthan** in Civil Appeal No. 10464 of 2017, decided on September 11, 2017, it is observed in para 22 of the said judgment that, mere nature of the offence committed by convict should not be a factor

to deny the parole outrightly. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of offence for which he was sentenced. We may hasten to put a rider here, viz. in those cases where a person has been convicted for committing a serious offence, the competent authority, while examining such cases, can be well advised to have stricter standards in mind while judging their cases on the parameters of good conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquility etc.

10] In the present case, as already observed, the petitioner did not misuse the liberty when he was released on earlier occasion on furlough/parole, he reported back to the jail within time. He is in jail for more than 10 years. Therefore, in our

opinion, keeping in view the order passed by the Division Bench at Principal seat [Coram : Smt.V.K.Tahilramani & Sandeep K.Shinde, JJ.] in Criminal Writ Petition No.2027/2017, decided on 21.06.2017 and taking into consideration the facts and circumstances of this case, we are inclined to allow this Petition. Accordingly, the Petition is allowed in terms of prayer (C). We direct the respondents that, the petitioner be released on furlough subject to the compliance of all the procedural formalities including furnishing the surety/sureties. Rule is made absolute on above terms. The Writ Petition stands disposed of accordingly.

[MANGESH S.PATIL]
JUDGE

[S.S.SHINDE]
JUDGE