

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1507 OF 2017

Mahesh s/o Manik Mote,
Age-31 years, Occu:Agril.,
R/o-Shivankhed, Tq-Chakur,
Dist-Latur,
At present: Prisoner
No. C-11073, Mandal-7,
Circle 3/2, Central Jail,
Nasik Road, Nasik

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Supdt. of Jail,
Central Jail Nasik, Nasik,
- 2) The Additional D.G.P.,
Maharashtra State, Pune-1,
- 3) The Deputy Supdt. of Prison,
Central Zone, Aurangabad

...RESPONDENTS

...

Mr. Pramod F. Patni Advocate for Petitioner.
Mr.M.M. Nerlikar, A.P.P. for Respondent
Nos.1 to 3.

...

**CORAM: S.S. SHINDE AND
A.M. DHAVALA, JJ.**

DATE OF RESERVING JUDGMENT : 12TH DECEMBER, 2017

DATE OF PRONOUNCING JUDGMENT : 15TH DECEMBER, 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 5th May 2017, passed by the Deputy Inspector General (Prison), Central Region, Aurangabad thereby rejecting the request of the Petitioner to release him on furlough and the order dated 26th September, 2017 passed by the Additional Director General of Police and Inspector General (Prison), Pune thereby rejecting the appeal filed by the Petitioner challenging the order passed by the Deputy Inspector General (Prison), Central Region, Aurangabad.

3. It is the case of the Petitioner herein

that he applied for furlough, however, by the impugned order dated 5th May, 2017, his application has been rejected. The appeal filed by the Petitioner has been rejected by order dated 26th September, 2017. In the impugned order passed by the appellate authority, 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, the Petitioner filed application for furlough on 26th February, 2017 and therefore 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 observed in the impugned order that furlough is not the right of the convict. Accordingly, by invoking the provisions of Rule 4(6) and Rule 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. There is no denial to the assertion of the Petitioner that since the date of his arrest in the month of September, 2012, the Petitioner is not at all released on parole or furlough. Learned counsel appearing for the Petitioner 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 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, relying upon the affidavit-in-reply filed by the Superintendent, Nashik Road Central Prison, Nashik, and also the relevant rules, submits that the prayer of the Petitioner to release him on furlough has been rightly turned down. He further invites our attention to the reasons assigned by the Respondent authorities while rejecting the application of the Petitioner to release him on furlough and prays that the Petition be rejected.

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 herein 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 Prisons (Bombay Furlough and Parole) Rules, 1959, amended as per the Notification dated 26th August, 2016, which 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 the said 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. We have perused the affidavit-in-reply filed on behalf of the Respondents. Along with the said reply, police report filed by Sub Divisional Police Officer, Chakur is enclosed. The report submitted by the Sub Divisional Officer, Chakur is favourable to the Petitioner and in the said

report it is specifically stated that Police had no objection if the Petitioner is released on furlough.

10. In the light of above, the impugned orders are quashed and set aside. We direct the Respondents to re-examine the entire case of the Petitioner and if found eligible, release the Petitioner on furlough, however, after completion of usual procedural formalities, and shall not deny the same on the grounds/objections mentioned in the impugned order and without insisting for fresh police report. The entire exercise shall be done as expeditiously as possible, however, within three weeks from the date of receiving copy of this order.

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

[A.M. DHAVALA, J.]

[S.S. SHINDE, J.]