

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1560 OF 2017

Naresh Eknath Naik
(Convict No.C-5051),
Age-45 years, R/o-Narpoli,
Tq-Bhivandi,
Dist-Thane, Mumbai.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through the Secretary,
Home Department,
Mantralaya,
Mumbai-32,
- 2) The Director General of Police
and Inspector General of Prison,
Maharashtra State,
Pune-1,
- 3) The Deputy Inspector General
of Prisons, Central Division,
Aurangabad (Maharashtra),
- 4) The Jailor,
Nashik Road Central Prison,
Jail Road, Nashik Road,
Nashik (Maharashtra).

...RESPONDENTS

...

Mr. Shantanu A. Deshpande Advocate appointed
for Petitioner.

Ms. Vaishali C. Choudhari , A.P.P. for
Respondent Nos.1 to 4.

...

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

DATE OF RESERVING JUDGMENT : 18TH DECEMBER, 2017

DATE OF PRONOUNCING JUDGMENT: 21ST DECEMBER, 2017

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of learned counsel appearing for the parties.

2. This Petition takes exception to the order dated 7th April, 2017 passed by the Deputy Inspector General of Prisons, Central Region, Aurangabad thereby rejecting the request of the Petitioner to release him on furlough and the order dated 10th August, 2017 passed by the

Additional Director General of Police and Inspector General of Prisons and Correctional Services, State of Maharashtra, Pune, thereby rejecting the appeal filed by the Petitioner challenging the order passed by the Deputy Inspector General of Prisons, Central Region, Aurangabad.

3. It is the case of the Petitioner that he applied for furlough on 9th December, 2016, however, by order dated 7th April, 2017 his application came to be rejected. The appeal filed by the Petitioner has been rejected by the impugned order dated 10th August, 2017. In the impugned order passed by the appellate authority, it is observed that the police report is adverse stating that if the Petitioner is released on furlough there may be danger to the life of the informant and also to the witnesses. Secondly, 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. Thirdly, it is mentioned in the police report that the witness, namely Smt. Motibai Mukund Bhandari, who is mother-in-law of the Petitioner, has expressed apprehension that if the Petitioner is released on furlough, he may give threats to his married daughter and a son who is taking education in 9th standard. 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). Fifthly, furlough is not the right of the convict and sixthly, the Superintendent of Jail has not recommended the case of the Petitioner. Accordingly, by invoking the provisions of Rule 4(4), 4(6), 4(10) and 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 the Petitioner, earlier on three times was released on furlough, and on two occasions he reported back to the jail authorities within time and only one occasion he reported late by 24 days. 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.

5. It is submitted by learned counsel appearing for the Petitioner 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]. Learned counsel further 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 Disruptive Activities (Prevention) Act, 1987 and wife of brother of Yakub Abdul Razak Menon.

6. Learned A.P.P. appearing for the State, relying upon the affidavit-in-reply filed by the Superintendent, Nashik Road Central Prison, Nashik, and also the relevant rules and the reasons stated in the report received from the Senior Police Inspector, Crime Branch, Office of Commissioner of Police, Thane, submits that the Petitioner's prayer to release him on furlough has been rightly turned down in view of the reasons stated in the police report. He further invites our attention to the reasons assigned by the

Respondent authority while rejecting the application of the Petitioner to release him on furlough. Learned A.P.P. further submits that mother-in-law of the Petitioner has given statement to the police that in case of release of the Petitioner on parole/furlough, he may give threats to his married daughter and a son who is taking education.

7. 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. 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. 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 Disruptive Activities (Prevention) Act, 1987, and the Petitioner is not convict under the said Act.

10. It is submitted by the learned A.P.P. that earlier when the Petitioner was released on furlough in the year 2008, he reported late by 24 days after expiry of the period of furlough granted to him. On account of overstay of the Petitioner for 24 days, his remission might have been deducted by the Respondent authorities. Further, it is pertinent to note that again when Petitioner was released on furlough on 6th June, 2016, he reported back to the jail authorities within time.

11. So far as the apprehension expressed by the mother-in-law of the Petitioner, the same can

be taken care of by imposing stringent conditions on the Petitioner while releasing him on furlough.

12. In the light of above, the impugned orders are quashed and set aside. We direct the Respondent authorities 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 like surety etc., and shall not deny the same on the grounds/objections mentioned in the impugned orders. While releasing the Petitioner on furlough, the Respondent authorities shall put conditions that the Petitioner, during the course of his furlough shall attend the nearest police station twice a day i.e. between 9.00 a.m. to 10.00 a.m. and 6.00 p.m. to 7.00 p.m., and shall not leave village Anjur, Tq-Bhiwandi, Dist-Thane, except for attending the police station, if there is no police station at village Anjur.

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

14. We appreciate the sincere efforts taken by learned counsel Mr. Shantanu A. Deshpande 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, Mr. Shantanu A. Deshpande, learned counsel is appointed to prosecute the cause of the petitioner, his fees be paid as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

[A.M. DHAVALA, J.]

asb/DEC17

[S.S. SHINDE, J.]