

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1564 OF 2017

Shri Prabhakar s/o Ganeshrao Jawale,
Age-Major, Occu:Nil,
R/o-Prisoner No.C/10930,
Nashik Road Central Prison,
Nashik.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai-400 032,
- 2) The Add. Director General of Police
and Inspector General of Prisons,
Maharashtra State, Pune-1,
- 3) The Deputy Inspector General
of Prisons, Aurangabad Division,
Aurangabad, Dist-Aurangabad,
- 4) The Superintendent,
Nashik Road Central Prison,
Nashik, Dist-Nashik.

...RESPONDENTS

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Ms. Sayali S. Tekale Advocate appointed
for Petitioner.

Mr.D.R. Kale, A.P.P. for Respondent
Nos.1 to 4.

...

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

DATE OF RESERVING JUDGMENT : 20TH 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 3rd 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 3rd October, 2016, however, by order dated 3rd 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 the Petitioner may not be released on furlough. 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, 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). Fourthly, the Superintendent of Jail has not recommended the case of the Petitioner, and fifthly furlough is not the right of the convict. Accordingly, by invoking the provisions of Rule 4(4), 4(6) 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 he was arrested on 10th June, 2013 and from the date of his arrest till date the petitioner has not been released on parole or furlough. The Petitioner is a life prisoner. It is the case of the Petitioner that he has undergone sentence of more than four years.

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 Sub Divisional Police Officer, Vasmat, 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.

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 request of the Petitioner to release him on furlough, the appellate authority has observed that the police report is adverse and it is stated by the police that the Petitioner may not be released on furlough. In this context, we have carefully perused the report dated 19th January, 2017,

submitted by the Sub-Divisional Police Officer, Vasmat. In the said report in all six reasons are given by the said police officer which all are favourable to the Petitioner and it is specifically stated that the Sub-Divisional Police Officer, Vasmat has no any objection if the Petitioner is released on furlough. However, surprisingly, at the end of the report it is opined that the Petitioner may not be released on furlough. Thus, considering the police report in its entirety, it is clear that relying upon such police report, the request of the Petitioner to release him on furlough should not have been turned down.

8. Secondly, 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."

9. 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.

10. Learned counsel appearing for the Petitioner has rightly contended 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 Disruptive Activities (Prevention) Act, 1987, and the Petitioner is not convict under the said Act.

11. In the light of above, the impugned orders are quashed and set aside. We direct the Respondent authorities to re-examine 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/sureties etc., and shall not deny the same on the grounds/objections mentioned in the impugned orders. The entire exercise shall be done as expeditiously as possible, however in any case within three weeks

from the date of receiving copy of this order.

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

13. We appreciate the sincere efforts taken by learned counsel Ms. Sayali S. Tekale 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. Sayali S. Tekale, 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.

[A.M. DHAVALA, J.]

asb/DEC17

[S.S. SHINDE, J.]