

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

CRIMINAL WRIT PETITION NO.1636 OF 2016

Krishna Jagannath Shirsat,
Convict No.7581,
Central Prison, Aurangabad,
Dist. Aurangabad.

PETITIONER

VERSUS

1. The State of Maharashtra,
Through Principal Secretary
(Home Dept.), Mantralaya,
Mumbai-32.
2. The Deputy Inspector General
(Prison), Central Division,
Aurangabad, Dist. Aurangabad.
3. Superintendent,
Central Prison, Aurangabad,
Dist. Aurangabad.

RESPONDENTS

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Mr.Devidas R. Shelke [Appointed] Advocate for
the petitioner
Mr.D.R.Kale, APP for the Respondent Nos.1 to
3/State

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**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 30.01.2017
Pronounced on : 02.02.2017

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

1. This Petition, under Article 226 of

the Constitution of India, seeks quashment of the impugned order passed by respondent no.2 Deputy Inspector General (Prison), Central Division, Aurangabad, dated 18.11.2016 and also seeks directions to respondent no.2 Deputy Inspector General (Prison), Central Division, Aurangabad, to release the petitioner on personal cash security of Rs.10,000/-.

2. The learned counsel appearing for the petitioner submits that the main reason for rejection of his application to release him on furlough has been rejected on the ground that there is no provision to release the convict undergoing imprisonment in close prison on furnishing only personal bond. He submits that the Full Bench of Gujarath High Court in the case of *Natia Jiria Vs. State of Gujarat and others*¹ has taken a view that when the convict is not able to furnish

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surety in that case convict can be released on his personal bond so that he may avail of the furlough which he has earned under the rules.

3. Pursuant to the notices issued to the respondents, the respondents have filed affidavit-in-reply. It is stated in the said affidavit-in-reply that the petitioner is convict undergoing imprisonment for the offence punishable under Section 302 of the Indian Penal Code. He was under trial prisoner for the period from 27th September, 2012 to 11th June, 2013. For the said period, the trial Court has ordered set off. The petitioner applied for furlough leave on 11th June, 2016. His application was forwarded to the Deputy Inspector General of Prison, Central Region, Aurangabad and copy of the proposal was also sent to the Sub Divisional Police Officer, Majalgaon, District Beed, for enquiry. On 17th September, 2016, report was

received from the Sub Divisional Police Officer, Majalgaon, which is adverse to the petitioner's prayer to release him on furlough leave. It is further stated that the application is received from Kushaba Bhaguji Shirsath, Bappaji Bhaguji Shirsath and Bhaguji Chudaji Shirsath, all resident of Bhayjali Jagirmoha, Taluka Dharur, District Beed, requesting therein that the petitioner should not be released on furlough leave as he may cause hurt to them or their families if released on furlough leave. The said letter was forwarded to the Deputy Inspector General of Prison, Central Region, Aurangabad on 24th September, 2016. The petitioner is not released either on parole or furlough leave since his arrest. It is stated that since there is adverse report from Sub Divisional Police Officer, Majalgaon, the Deputy Inspector General of Prison, Central Region, Aurangabad, by his letter dated 18th October,

2016, gave a chance to the petitioner to give another guarantor, who is willing to stand as surety. However, the petitioner instead of giving another guarantor, forwarded application to the Deputy Inspector General of Prison, Central Region, Aurangabad, on 24th October, 2016, requesting to grant him furlough leave on furnishing personal bond. However, his application to release him on furnishing personal cash security is rejected by the said authority.

4. The learned APP appearing for the respondent – State submits that as per the relevant provision in the Prison Manual, 1979 Chapter No.37, Furlough and Parole to Prisoners Rule No.6 provided that the furlough not to be granted without surety. Therefore, keeping in view the relevant rules, the prayer of the petitioner to release him on furlough on executing personal security bond is rightly rejected by the

respondents, and therefore, this Court may not entertain the prayer of the petitioner to release him on furlough leave on furnishing personal bond.

5. We have considered the submissions of the learned counsel appearing for the petitioner and the learned APP appearing for the respondent – State. With their able assistance, carefully perused the pleadings in the Petition and annexures thereto, and also the reply filed by the respondents and other documents placed on record. Whenever there is prayer by the convict undergoing imprisonment of life to release him on furlough or parole, as the case may be, the respondent authorities are bound to adhere to the relevant Rules. The Division Bench of the Bombay High Court [Coram: Smt.V.K.Tahilramani & Smt.Anuja Prabhudessai, JJ.] in the case of *Santosh Namdeo Bhukan Vs. State of*

*Maharashtra*² had occasion to consider the scope, ambit and purport of Section 48-A of the Prisons Act (9 of 1894 as applicable in State of Maharashtra) and Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959. In para 25 of the said Judgment, it is held thus:

25. If the rules provide for furlough leave and equally contain the provisions enabling imposition of conditions for being released on furlough leave, then, the prisoner cannot claim it to be a matter of right. A prisoner cannot urge that despite the provisions in the rules and contrary thereto, his case for furlough must be considered and granted. His case can be considered provided it falls within four corners of the rules. The petitioner before us has understood this position and, therefore, has raised a challenge to the validity of notification dated 23-2-2012 and

2 2016 [4] Mh.L.J. [Cri.] 83

more particularly sub-rule (13) of rule 4 which covers the case of the petitioner. However, we find that his challenge is not well founded.

6. As it is apparent from the material placed on record that prayer of the petitioner to release him on furlough leave has been rejected on the ground that he is not ready to furnish surety and also adverse report received from the Sub Divisional Police Officer, Majalgaon.

7. Be that as it may, we are not inclined to quash and set aside the impugned order, however, we grant liberty to the petitioner to file application afresh within two weeks from today. In case such application for releasing the petitioner on furlough leave is filed within two weeks from today, the respondent authorities to consider the same in accordance with law / rules / procedure, as expeditiously as possible,

however, within four weeks from filing such application. With the above observations, the Writ Petition stands disposed of.

8. We make it clear that the observations made hereinbefore are confined to the present Petition and the authority shall not rely upon the said reasons while considering the prayer of the petitioner afresh to release him on furlough or parole leave as the case may be.

9. Since, Mr. Devidas R. Shelke, the 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.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE