

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

CRIMINAL WRIT PETITION NO.1672 OF 2016

Vasant Tipaji Jadhav
(C-7480) (Convict)
Central Prison, Aurangabad **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through its Secretary
Home Department (Prison),
Mantralaya, Mumbai
2. The State of Maharashtra
Through D.I.G. (Prisons),
Aurangabad.
3. Superintendent,
Central Jail, Aurangabad (Harsool)
Tq. & Dist. Aurangabad **RESPONDENTS**

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Mr.V.N.Shelke [Appointed] Advocate for the
petitioner
Ms.Preeti V. Diggikar, APP for the Respondent
/State

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

Reserved on : 01.02.2017
Pronounced on : 03.02.2017

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

1. This Petition, under Article 226 of the Constitution of India, seeks direction to release the petitioner on furlough leave on furnishing P.R.bond.

2. The learned counsel appearing for the petitioner submits that the petitioner is undergoing imprisonment for the offence punishable under Section 302 of the Indian Penal Code and at present he is in Aurangabad Central Prison, Aurangabad. He further submits that the Divisional Commissioner, Aurangabad, has granted parole leave to the present petitioner by his order dated 16.12.2015. Thereafter, respondent no.3 issued a letter on 10.10.2016 sent by the Deputy I.G. [Prison], Aurangabad, regarding furnishing fresh surety by the petitioner seeking furlough leave. It is submitted that respondent no.2 rejected the prayer of the

petitioner to release him on furlough leave on furnishing personal security bond. It is submitted that the mother of the petitioner died on 08.08.2015 and therefore he wanted to visit his native place. He further submits that he has two daughters and there is no any other family member to look after them. The learned counsel appearing for the petitioner relying upon the judgment in the case of *Rameshwar Shivram Gaikwad Vs. The State of Maharashtra in Writ Petition No.591 of 2016* decided on 23.06.2016 by the Division Bench of the Bombay High Court Bench at Aurangabad, submits that this Court may issue directions to the respondents to release the petitioner on furlough leave on furnishing personal bond.

3. Pursuant to the notices issued to the respondents, respondents have filed affidavit-in-reply. It is stated in the said affidavit-in-reply that the Dy. Inspector

General of Prison, Central Region, Aurangabad, by letter dated 18.11.2016 rejected the application of the petitioner for granting him furlough leave on personal surety bond as per The Prison Manual, 1979 Chapter No.37 Furlough and Parole to Prisoners Rule No.06, which says that, the furlough not to be granted without surety.

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*¹ had occasion to consider the scope, ambit and purport of Section 48-A of

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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 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.

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.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

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