

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.66 OF 2017

Shivayya Marihal Prisoner No.
presently serving sentence
at Central Jail Colvale, Goa.

... Petitioner

Versus

1. State of Goa,
Through The IG Prison,
Old Director of Education Building,
Panaji, Goa.

2. PP High Court, Panaji, Goa.

... Respondents

Shri T. George John, Advocate for the petitioner.

Shri P. Faldessai, Additional Public Prosecutor for the respondents.

**CORAM :- F. M. REIS &
NUTAN D. SARDESSAI, JJ**

DATE : 12th April, 2017.

ORAL JUDGMENT : (Per **NUTAN D. SARDESSAI, J.**)

Heard Shri T. George John, learned Advocate for the petitioner and Shri P. Faldessai, learned Additional Public Prosecutor for the respondents.

2. Rule. Shri P. Faldessai, learned Additional Public Prosecutor waives service on behalf of the respondents.

3. Heard forthwith with the consent of the learned Advocate appearing for the respective parties.

4. It was the case of the petitioner that he was undergoing sentence in Central Jail Colvale on conviction. He was assailing the order passed by the respondent no.1 who had vide the impugned order dated 11/11/2016 rejected his request for furlough on the premise that there was no police report.

5. Heard Shri T. George John, learned Advocate for the petitioner who submitted that he is blind and that he was earlier released vide the order dated 07/03/2016 and his request too had also to be considered in the circumstances of the case. Shri P. Faldessai, learned Additional Public Prosecutor for the respondents fairly conceded that his request could be considered.

6. We have considered the submissions of Shri T. George John, learned Advocate for the petitioner and that of Shri Shri P. Faldessai, learned Additional Public Prosecutor for the respondents who has no objection for allowing the present application. We have otherwise perused the record from which it is apparent that but for the police report his application for furlough has been rejected by the respondent no.1. It is not as if the petitioner was earlier not released on furlough or that he had not surrendered within the prescribed time. It is apparent that there was inaction on the part of the concerned Police in furnishing the report which has been the only basis for the respondent no.1 to reject his

request for furlough. That by itself cannot be a ground to deny the petitioner the benefit of furlough when it is a substantial and legal right accruing in his favour. In the result, we pass following

ORDER

1. The impugned order dated 11/11/2016 passed by the respondent no.1 is quashed and set aside.
2. The petitioner is held entitled to be released on furlough for a period of 28 days after complying with all the provisions of the Rules and law applicable and subject to the terms and conditions that may be imposed by the concerned authorities upon furnishing the Personal Bond for ₹25,000/- with one surety in the like amount giving cash or otherwise to the satisfaction of the respondent no.1.
3. All other conditions shall be imposed by the concerned authorities in accordance with law.
4. Rule is made absolute in the above terms.
5. Petition is disposed off accordingly.

NUTAN D. SARDESSAI,J.

F. M. REIS,J.

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