

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2370 OF 2017**

Shri. Atul Ashok Deshmukh]
Aged 32 years, Occ: Nil]
Resident of Deshmukhwadi,]
Airoli village, Room No. 1697,]
Navi Mumbai, At present undergoing]
the sentence imposed upon him in]
Nasik Road Central Prison.].. Petitioner

Vs.

- | | |
|---------------------------------|-----------------|
| 1. The Commissioner of Police, |] |
| Navi Mumbai, Dist. Thane |] |
| |] |
| 2. The Dy. Inspector General of |] |
| Prisons, Pune. Aurangabad |] |
| |] |
| 3. Superintendent of Prison, |] |
| Nashik Road Central Prison, |] |
| Nashik |] |
| |] |
| 4. The State of Maharashtra |].. Respondents |

....

Mr. Rahul Arote Advocate for the Petitioner
Mrs. G.P. Mulekar A.P.P. for the State

....

**CORAM : SMT.V.K.TAHILRAMANI AND
SHRI.M.S.KARNIK, JJ.
DATED : OCTOBER 05, 2017**

ORAL JUDGMENT [PER SMT. V.K.TAHILRAMANI, J.]:

1 Heard both sides.

2 The petitioner is seeking that he be released on furlough for a period of 60 days. The petitioner had preferred the application for furlough on 28.3.2016. At that time, the prisoners were being released on furlough only for a period of 14 days with an extension of another 14 days if the facts and circumstances so warrant. At no point of time past or present furlough was ever granted for 60 days. In such case, it is not possible to grant furlough for a period of sixty days. The learned counsel for the petitioner submitted that appropriate period of furlough be granted.

3 In relation to his furlough application dated 28.3.2016, by order dated 27.5.2016, the petitioner was asked to furnish surety who is residing 200 kms. away. This shows that the petitioner was going to be released by the authorities on furlough provided he furnishes surety who was residing 200 kms. away from the place the witnesses resided and obviously the petitioner also had to reside 200 kms. away from the place where the witnesses resided. Being aggrieved by the said order, the petitioner preferred Cri. Writ Petition No. 2569 of 2016 before this Court. By order dated 18.8.2016, the said writ

petition came to be disposed of and distance of 200 kms. was reduced to 100 kms. However, even thereafter the application of the petitioner came to be rejected by order dated 7.2.2017. Being aggrieved thereby, the petitioner preferred an appeal. The said appeal was dismissed by order dated 26.5.2017, hence, this petition.

4 The order of rejection which has been produced by the learned A.P.P. shows that the petitioner had earlier given threats to the witnesses, hence, there is danger to the life of the witnesses if the petitioner is released on furlough. The witnesses are staying in Kalwa, Dist. Thane. Pursuant to the order dated 18.8.2016 passed by this Court in W.P.No. 2569 of 2016, the petitioner was furnishing surety of his cousin sister i.e. Smt. Swati Maruti Phad who was residing at Nashik, however, the application of the petitioner for furlough came to be rejected on the ground that the complainant and witnesses had objected to the petitioner being released on furlough, hence, police report stated that the petitioner would not listen to the surety and surety would not be able to keep a check on the petitioner. In addition, it is stated that the petitioner had

tendency to abscond, hence, he should not be released on furlough. As far as this ground of the petitioner having tendency to abscond is concerned, there is no material produced before us to show that the petitioner had such tendency. The petitioner has never been released on parole or furlough earlier, hence, there was no question of absconding and not reporting to the prison in time. Thus, we find this ground to be without any basis. So also there is no basis to state that the surety will not be able to keep a check on the petitioner.

5 As far as danger to the life of the complainant and witnesses is concerned, they are residing in Kalwa, Dist. Thane and the learned counsel for the petitioner stated that the petitioner will reside at "Mu.N-9/M-2/L-4-4, Vande Matram Chowk, Old Cidco, Nasik" and he will report to Ambad Police Station, Dist. Nasik. The surety is also from Nasik. In our opinion, if condition is imposed that the petitioner shall not enter into the limits of District of Thane during the period he is on furlough, the safety of the complainant and witnesses would be secured.

6 In addition, the learned A.P.P. submitted that when the co-accused was released from the prison, he did not stay at the address which he had indicated, but, instead, he resided at the place where the incident took place. Considering the facts and circumstances of this case, the conduct of the co-accused would not preclude the petitioner from being released on furlough. In our opinion, none of the grounds mentioned in the order of rejection are good grounds for rejecting the application of the petitioner for furlough.

7 In view of the above facts, the petitioner to be released on furlough for a period of 14 days on furnishing surety of Smt. Swati Maruti Phad. During the period that the petitioner is on furlough, he will not enter limits of Thane District. In addition, the authorities may impose the usual terms and conditions on the petitioner.

8 Petition is allowed. Rule is made absolute in above terms.

[M.S.KARNIK, J.]

[SMT.V.K.TAHILRAMANI, J.]