

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

Criminal Writ Petition No. 0004 of 2018

District : Nanded

Madhav Sayaji Redas
(Convict No. C-8294),
Age : 35 years,
Occupation : Nil,
R/o. Central Prison,
Nashik Road,
Nashik.

.. Petitioner.

versus

1. The State of Maharashtra,
Through the Deputy Inspector
General (Prison),
Central Division,
Aurangabad.

2. The Superintendent,
Nasik Road Central Prison,
Nasik.

3. The Additional Police
Director General and
Inspector General (Prison)
and Reform Service,
Pune - 1.

.. Respondents.

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*Mr. Gajendra D. Jain, Advocate (appointed), for
the petitioner.*

*Mr. S.W. Munde, Addl. Public Prosecutor, for
respondent nos.01 to 03.*

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**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 22ND FEBRUARY 2018

ORAL JUDGMENT [Per Prasanna B. Varale, J.] :

Heard learned Counsel (appointed) for the petitioner and the learned Addl. Public Prosecutor for the respondents.

02. The petitioner is a convict prisoner undergoing his sentence at Central Prison, Nashik Road, Nashik. The petitioner submitted an application for grant of furlough leave. By order dated 05.05.2017, it was informed to the petitioner, that his application is rejected. An appeal was filed before the appellate authority. The appellate authority also could not find any favour with the petitioner. Resultantly, the appeal was also dismissed.

03. Learned Counsel for the petitioner vehemently submitted that though there are as many as two basic grounds for rejection of the leave, neither of the grounds is sustainable. Learned Counsel by inviting our attention to the order at Exhibit "A", submitted that the first ground is pendency of appeal before the Hon'ble Apex Court and in view of the Government Circular dated 26.08.2016, the petitioner is not entitled for grant of leave. The second reason is, in view of the judgment of Division Bench of this Court at principal seat in Criminal Writ Petition No. 4017 of 2016, in the matter of *Smt. Rubina Suleman Memon Vs. The State of Maharashtra & others*, the

petitioner is not entitled for grant of any leave. Then, the learned Counsel also referred to the order passed by the appellate authority placed at Exhibit "B" and submits that certain additional grounds are also considered by the appellate authority, namely, belated surrender of the petitioner to the prison authorities.

04. Learned Counsel for the petitioner further submitted that in so far as the first ground in respect of pendency of appeal, is concerned, the Division Bench of this Court at Nagpur Bench was pleased to consider this very aspect. Our attention is invited to the copy of an unreported order dated April 26, 2017, in Criminal Writ Petition (CWP) No. 196 of 2017 and Criminal Writ Petition (CWP) No. 97 of 2017, in the matter of *Arun s/o. Gulab Gawli & another Vs. State of Maharashtra*, through its Secretary, Home Department & others. It would be useful to refer observations of the Division Bench in paras 2 and 3 of the order, which read as under :

"2. The learned PP submits that the appropriate Authorities have advised State Government which is taking some steps and those steps may result in amendment to the Rules. She seeks time till after vacation to make a definite statement in this respect.

3. The learned Senior Advocate has no objection provided the request of the petitioner for grant of furlough in Criminal Writ Petition No. 97 of 2017 is

considered. He also adds that from the response of the respondents, it appears that they have accepted the inconsistency or arbitrariness in the provision which denies furlough to the prisoners whose appeal challenging conviction is pending and bail application is rejected by the High Court. " (Emphasis supplied)

The Division Bench, in view of the statement made before the Court and on considering other grounds, namely, a vague police report and the track of leave of the petitioner, found that there was no reason to deny furlough leave. The Division Bench accordingly directed release of the petitioner in Criminal Writ Petition No. 97 of 2017 on furlough leave, within two weeks from the date of the order, after obtaining appropriate bonds, undertakings from the convict and his relatives / sureties.

05. Learned Addl. Public Prosecutor opposed the petition and urged that the relief prayed in the petition be rejected.

06. There is no dispute, that the very circular which is referred to in the order prevents the prisoner to avail the benefit and statement was made before the Division Bench at Nagpur Bench, that the State Government is in process to re-think the rule and if necessary, cause an amendment to rule. We may also take note of the decision by Division Bench of this Court at this Bench, in Criminal Writ Petition No. 1010 of 2017, in the matter of *Shivaji Vs. The State of*

Maharashtra & others, decided on 13.10.2017. So also, a useful reference can be made to the decision of Division Bench of this Court at this Bench, in Criminal Writ Petition No. 1237 of 2017, in the matter of *Hariom Vijay Pandey Vs. The Superintendent & others*, decided on the same day. In both these petitions, the Division Bench of this Court had taken note of the above referred judgment of the Division Bench at Nagpur Bench, in the matter of *Arun s/o. Gulab Gawli & another (supra)* and the benefit was then given to the petitioners therein.

07. Further, we may refer to a Full Bench judgment of this Court at principal seat in the matter of *S. Sant Singh @ Pilli Singh Ajit Singh Kalyani Vs. Secretary, Home Department, Govt. of Maharashtra & others* [2006 (2) Mh.L.J. 422 = 2006(1) Bom.C.R.(Cri.) 743]. Though this is the case which was pronounced prior to Government Circular dated 26.08.2016, yet it appears that at that time also, there was similar provision, wherein it has been observed in paras 26 and 27 of the judgment, thus :

"26. The provisions of law clearly disclose that once a person is convicted and sentence is imposed by the Court, and such person is sent to jail as a prisoner the execution of the sentence imposed upon him is to be done by the appropriate Government in accordance with the rules framed in that regard. Once a person is in prison he would be governed by the Prisons Act, and the Rules framed thereunder. The Prison Rules clearly provide for grant of

parole. It is for the Competent Authority or the Government to decide as to whether any Parole for any particular period is to be granted to the convicts undergoing imprisonment period and on the conditions as may be fixed. It is, therefore, clear that merely because a convict prefers an appeal before the Appellate Court, that would not divest the Government of its powers under the Prison Act to deal with the management of the convict by following the rules framed under the said Act.

27. From this, it is clear that the powers of the State to grant Parole are not fettered even if the appeal of the convict is pending before the Court. Thus, the Competent Authority or the Government would have the legal competence to entertain an application for parole by following the procedure set out under the Prison Rules to meet the contingencies stated therein. The exercise of such power would not be in any way be in conflict with the powers exercised under section 389 and/or Section 432 of the Code of Criminal Procedure. It is also evident that the amendments carried out in this scheme of Rules 19 and 25 in the year 1989 have provided for adequate safeguards so as to ensure that the benefit of parole leave is not misused or abused so as to defeat or nullify the Courts order passed under Section 389 of the Code of Criminal Procedure as was noticed in *Jayant Veerappa Shetty Vs. State of Maharashtra* [1986(1) Bom.C.R.311 = 1986 Cri.L.J. 1298]. "

Thus, we find that this reason cannot be a hurdle in the way of the petitioner.

08. Learned Counsel for the petitioner was also justified in submitting that the second reason,

namely, citing the decision in the matter of *Smt. Rubina Suleman Memon (supra)*, is not at all applicable to the case of the petitioner as the petitioner is not a convict under the Terrorist & Destructive Activities Act, 1987.

09. Then, the other ground referred to in the order of the appellate authority, is about belated surrender by the petitioner - convict. Perusal of the material placed on record clearly show that the petitioner was released on 07 occasions. Out of 07 occasions, on 04 occasions he surrendered belatedly and on 03 occasions, he surrendered on due date. For belated surrender, jail punishment is also awarded to the petitioner.

10. In the facts and circumstances of the case, we do not find any reason to reject the prayer of the petitioner seeking the benefit of furlough leave.

11. In the result, the criminal writ petition is allowed.

The impugned order dated 05.05.2017, passed by respondent no.02 i.e. Deputy Inspector General of Prisons, Aurangabad, so also, order dated 03.10.2017, passed by respondent no.03 i.e. Addl. Director General of Police & Inspector General of Prisons, Pune, are quashed and set aside. The petitioner is directed to be released on furlough leave after

complying with necessary formalities.

12. Learned Advocate Mr. G.D. Jain was appointed to represent case of the petitioner. He has rendered able assistance to the court. His fees is quantified at Rs. 3,000/- [Rupees three thousand].

(Smt. Vibha Kankanwadi)
JUDGE

(Prasanna B. Varale)
JUDGE

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