

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

Criminal Writ Petition No. 0071 of 2018

District : Nanded

Sherkhan s/o. Mirbaj Khan Pathan,
Age : Major,
Occupation : Nil,
At present - Central Prison,
Nashik Road, Nashik.

.. Petitioner.

versus

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Deputy Inspector
General of Prisons,
Aurangabad Division,
District Aurangabad.
3. The Additional Director
General of Police &
Inspector General [Prisons],
Pune.
4. The Superintendent
at Central Prison,
Nashik Road,
Nashik.

.. Respondents.

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*Ms. Varsha M. Bhagwat, Advocate (appointed), for
the petitioner.*

*Mr. R.B. Bagul, Addl. Public Prosecutor, for
respondent nos.01 to 04.*

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

DATE : 22ND FEBRUARY 2018

ORAL JUDGMENT [Per Smt. Vibha Kankanwadi, J.] :

Learned Advocate Ms. Varsha M. Bhagwat appears before the Court and submits that the learned Advocate appointed for the petitioner, namely, Ms. Pratibha H. Jadhav (Suryawanshi) is not in a position to attend this Court due to ill-health. However, Ms. Bhagwat submits that she has obtained brief of the matter and she is ready with the matter.

02. In that view of the matter, learned Advocate Ms. Pratibha H. Jadhav (Suryawanshi) is discharged as Counsel (appointed) for the petitioner and in her place learned Advocate Ms. Varsha M. Bhagwat is appointed to represent the petitioner.

03. Heard learned Advocate Ms. Bhagwat for the petitioner and learned APP Mr. R.B. Bagul for the respondents.

04. By the present petition, the petitioner - convict no. C-8899 is challenging the order dated 03.06.2017, passed by respondent no.02 i.e. Deputy Inspector General of Prisons, Aurangabad, thereby rejecting the application made by the petitioner seeking furlough leave. The petitioner has also challenged the order dated 24.10.2017, passed by

respondent no.03 i.e. Addl. D.G.P. & Inspector General of Prisons, Pune, thereby rejecting the appeal preferred by the petitioner.

05. The prayer of the petitioner for furlough leave was rejected on the ground that the police report is adverse to the petitioner. It is mentioned in the impugned order, that on earlier occasion when the petitioner was released on leave, he reported late to the jail authorities by 677 days and that too, police had to arrest him. The impugned order further mentions, that there is possibility of disturbance in peace if the petitioner is released on leave. It is further mentioned, that if the petitioner is released on leave, he will definitely abscond. Furthermore, the surety given by the petitioner is not able to control the petitioner. Lastly, it is mentioned that there is no recommendation of Jail Superintendent.

06. Learned Counsel for the petitioner submits, that the petitioner when released on leave on earlier occasion, reported late by 677 days due to death of his wife and there was nobody to look after his four minor girls. However, separate punishment is awarded by the jail authorities for reporting late by the petitioner. She submits that the other grounds mentioned in the impugned orders are vague and unsustainable. She has, therefore, urged that the petition be allowed and the petitioner may be released on furlough leave.

07. Learned Addl. Public Prosecutor appearing for the respondents vehemently opposed the petition and urged that the petition be dismissed.

08. So far as the ground, that the police report is adverse to the petitioner, there are no incriminating circumstances quoted. Moreover, on earlier occasion when the petitioner reported late by 677 days, a plausible explanation was tendered by the petitioner, that his wife died and he had to look after his four girls. The punishment for late surrender is awarded by the jail authorities. So far as the ground, that there is no recommendation of Jail Superintendent, same is untenable. The leave sanctioning authority may suo motu call recommendation or otherwise from the Jail Superintendent. Other grounds mentioned in the impugned orders are vague and based on mere apprehension.

09. Considering facts and circumstances of the case, we are of the opinion that the learned Counsel for the petitioner has made out a case for grant of relief as prayed in the petition.

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

The impugned order dated 03.06.2017, passed by respondent no.02 i.e. Deputy Inspector General of

Prisons, Aurangabad, so also, order dated 24.10.2017, passed by respondent no.03 i.e. Addl. D.G.P. & Inspector General of Prisons, Pune, are quashed and set aside. The petitioner is directed to be released on furlough leave after completing necessary formalities.

11. Learned Advocate Ms. V.M. Bhagwat was appointed to represent case of the petitioner. Her fees is quantified at Rs. 3,000/- [Rupees three thousand].

(Smt. Vibha Kankanwadi)
JUDGE

(Prasanna B. Varale)
JUDGE

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