

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

Criminal Writ Petition No. 0091 of 2018

District : Nashik

Sharafat Ali Liyakat Ali Shaikh
[Convict No. C/10249],
Presently in Central Prison,
Nasik.

.. Petitioner.

versus

1. The State of Maharashtra.

2. Home Secretary,
Home Department,
Mantralaya, Mumbai.

3. Additional Director General
of Police And Inspector
General (Prison),
Maharashtra State, Pune-1.

4. Superintendent of Jail,
Central Prison,
Nasik Road, Nasik.

5. D.I.G. Prison,
Aurangabad.

6. District Superintendent of
Police,
Mumbai, District Mumbai.

.. Respondents.

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*Ms. Shilpa L. Awachar, Advocate (appointed), for
the petitioner.*

*Mr. K.S. Patil, Addl. Public Prosecutor, for
respondent nos.01 to 06.*

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

DATE : 21ST FEBRUARY 2018

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

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

02. By the present petition, the petitioner - Convict no. C-10249 is challenging the order dated 31.07.2017, passed by respondent no.5 i.e. D.I.G. Prison, Aurangabad, thereby rejecting the application made by the petitioner seeking furlough leave. The petitioner has also challenged the order dated 07.12.2017, passed by respondent no.03 i.e. Addl. D.G.P. & I.G. (Prison), Pune, thereby rejecting the appeal preferred by the petitioner.

03. 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 if the petitioner is released on furlough leave, the possibility of committing serious crime at his instance cannot be ruled out. It is also mentioned, that if the petitioner is released on bail, there would be problem of law and order situation. Also, no assurance can be given that the petitioner would surrender before jail authorities, if released on furlough leave. The last ground

mentioned is, there is no recommendation of Jail Superintendent.

04. Learned Counsel for the petitioner submitted that the grounds for rejection of furlough leave mentioned in the impugned order are vague and unsustainable. She submits that the ground, that the police report is adverse, is not substantiated by any instances in the past. She has, therefore, urged that the petitioner may be released on furlough leave.

05. Learned Addl. Public Prosecutor appearing for the respondents has supported the impugned order and opposed the petition.

06. So far as the ground, that there is adverse police report against the petitioner, no instance of such nature is mentioned if the petitioner - convict was ever before released on furlough leave. Moreover, the ground is not substantiated by filing any reply on behalf of the State. So also, no instances of late reporting are mentioned, if the petitioner - convict was released on furlough leave. The ground, that there is no recommendation of Jail Superintendent on the application made by the petitioner is also not tenable. In this respect, the sanctioning authority may suo motu call recommendation or otherwise from the Jail Superintendent.

07. Considering the 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.

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

The impugned order dated 31.07.2017, passed by respondent no.5 i.e. D.I.G. Prison, Aurangabad, so also the order dated 07.12.2017, passed by respondent no.03 i.e. Addl. D.G.P. & I.G. (Prison), Pune, are quashed and set aside. The petitioner is directed to be released on furlough leave as per entitlement under the Prisons (Bombay Furlough and Parole) Rules, 1959. The petitioner is directed to comply with the necessary formalities.

09. Learned Advocate Ms. S.L. Awachar 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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