

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

Criminal Writ Petition No. 0104 of 2018

District : Aurangabad

Shaikh Ashpak s/o. Shaikh Hassan
(C-8138),
Central Prison, Aurangabad.

.. Petitioner.

versus

1. The State of Maharashtra,
Through D.I.G., Prisons,
Aurangabad.

2. The State of Maharashtra,
Through Superintendent,
Central Prison,
Aurangabad.

.. Respondents.

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Mr. Rupesh A. Jaiswal, Advocate, for the petitioner.

*Mr. S.W. Munde, Addl. Public Prosecutor, for
respondent nos.01 and 02.*

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

DATE : 03RD APRIL 2018

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

Heard learned Advocate for the petitioner
and the learned Addl. Public Prosecutor for the
respondents.

02. By the present petition, the petitioner -

convict no. C-8138 is challenging the order dated 14.09.2017, passed by respondent no.01 i.e. Deputy Inspector General of Prisons, Aurangabad, thereby rejecting the prayer of the petitioner seeking furlough leave.

03. The prayer of the petitioner seeking furlough leave was rejected mainly on the ground that there is adverse police report against the petitioner.

04. Learned Advocate for the petitioner submitted that the ground for rejection of furlough leave is unsustainable. He submits, that no specific instances have been mentioned in the impugned order though it refers that the police report is adverse. He submits, that the prison authorities have reported that the behaviour of the petitioner - convict in the prison is satisfactory and also recommended for grant of furlough leave. He has, therefore, urged that the petition be allowed and the petitioner may be released on furlough leave.

05. Learned Addl. Public Prosecutor appearing for the respondents has vehemently opposed the petition. He has invited our attention to the affidavit in reply filed on behalf of the State. He has supported the impugned order by submitting that as there was adverse police report, the petitioner was refused grant of furlough leave. He has, therefore, urged that the petition be dismissed.

06. We have perused the affidavit in reply filed on behalf of the State. The affidavit in reply states that on account of adverse police report, the competent authority has rightly passed the impugned order. Along with the affidavit in reply, a communication addressed by the Assistant Police Commissioner, Aurangabad, to the Deputy Inspector General of Prisons, Aurangabad, is placed on record. The communication states that the surety of the petitioner has not produced medical certificate of petitioner's ailing daughter and the surety has not produced necessary documents such as tax receipts, 7/12 extracts, etc. The affidavit further states that the petitioner was once released on parole leave. However, he did not surrender to the prison authorities within time. The petitioner was produced before the prison authorities by police and he surrendered late by 142 days.

07. So far as the adverse police report, that the medical certificate of ailing daughter of the petitioner and surety documents were not submitted, the ground is unsustainable. If the petitioner had surrendered late to the prison authorities on earlier occasion, the prison authorities are at liberty to award separate punishment to the petitioner therefor. Therefore, there is no reasonable ground for rejecting prayer of the petitioner for furlough leave.

8. In the facts and circumstances of the case, in our opinion, learned Advocate for the petitioner has made out a case for grant of relief as prayed in the petition.

9. In the result, the criminal Writ Petition is allowed.

The impugned order dated 14.09.2017, passed by respondent no.01 i.e. Deputy Inspector General of Prisons, Aurangabad, is quashed and set aside. The petitioner - convict is directed to be released on furlough leave, as expeditiously as possible, after complying all necessary formalities.

(Smt. Vibha Kankanwadi)
JUDGE

(Prasanna B. Varale)
JUDGE

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