

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

Criminal Writ Petition No. 0495 of 2018

District : Aurangabad

Umesh s/o. Ganesh Patil,
(C-10409)(Convict),
Central Prison,
Nashik Road, Nashik.

.. Petitioner.

versus

1. The State of Maharashtra,
Through the Secretary,
Home Department (Prison),
Mumbai - 400 005.
2. The Additional Director
General of Police &
Inspector General of Prison
& Correctional Services,
State of Maharashtra,
Pune.
3. The Deputy Inspector General
of Prisons,
Central Division,
Aurangabad.
4. The Superintendent,
Central Prison,
Nashik Road,
Nashik.

.. Respondents.

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Mr. Rajendra N. Chavan, Advocate, for the petitioner.

*Mr. S.B. Pulkundwar, Addl. Public Prosecutor, for
respondent nos.01 to 04.*

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

DATE : 26TH 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-10409 has challenged the order dated 16.09.2017, passed by respondent no.03 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 12.01.2018, passed by respondent no.02 i.e. Addl. D.G.P. & Inspector General of Prisons, Pune, thereby rejecting the appeal preferred by the petitioner.

03. The prayer of the petitioner seeking furlough leave was rejected by the authorities on the grounds viz. (a) Police report is adverse to the petitioner, (b) The surety stood for the petitioner does not appear to be proper as he is cousin of the petitioner (c) The possibility of petitioner threatening the complainant and witnesses cannot be ruled out and there is possibility of threat to the lives of the complainant and witnesses, if the

petitioner is released on leave, and (d) There is no recommendation of the Jail Superintendent.

04. Learned Advocate appearing for the petitioner submits, that the grounds for rejection of furlough leave to the petitioner are vague and unsustainable. He submits, that though the police report is stated to be adverse against the petitioner, no specific instances are mentioned. He further submits, that the objection to the surety proposed by the petitioner is unsustainable. He further submits, that though apprehension is expressed that the petitioner is likely to threaten the complainant and witnesses, no specific instances, if any, are mentioned. He has, therefore, urged that the petition be allowed and the petitioner may be released on furlough leave.

05. Learned Addl. Public Prosecutor has vehemently opposed the petition and supported the impugned orders. He has urged that the petition be dismissed.

06. As rightly submitted by the learned Advocate for the petitioner, though police report is stated to be adverse to the petitioner, no past events, if any, are mentioned in the impugned orders. So also, objection taken to the surety proposed by the petitioner is vague and unsustainable. Similarly, the apprehension expressed in respect of threats to the complainant and witnesses at the instance of the

petitioner is without any substance. The last ground, that there is no recommendation of Jail Superintendent is unsustainable. The leave sanctioning authority can *suo motu* call remarks about recommendation or otherwise from the Jail Superintendent.

07. In the facts and circumstances, learned Advocate 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 16.09.2017, passed by respondent no.03 i.e. Deputy Inspector General of Prisons, Aurangabad, so also, the order dated 12.01.2018, passed by respondent no.02 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, as expeditiously as possible, after complying all necessary formalities.

(Smt. Vibha Kankanwadi)
JUDGE

(Prasanna B. Varale)
JUDGE

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