

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

CRIMINAL WRIT PETITION NO.795 OF 2018

Dhananjay s/o.Namdeo Kharade

[C-17713]

Central Prison Yerwada, Pune.

PETITIONER

VERSUS

1] The State of Maharashtra

Through I.G.

Prisons, Pune.

2] The State of Maharashtra

Through D.I.G. Prisons, Pune.

3] The State of Maharashtra

Through Superintendent Central Prison,

Yerwada, Pune.

RESPONDENTS

...

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

Mr.Y.G.Gujarathi, APP for Respondent/State

...

CORAM: S.S.SHINDE &

V.K.JADHAV, JJ.

Reserved on : 09.07.2018

Pronounced on : 12.07.2018

JUDGMENT: [Per S.S.Shinde, J.]:

1] Heard. Rule. Rule made returnable

forthwith, and heard finally with the consent

of the parties.

2] This Petition is filed praying

therein to quash and set aside the orders dated 21.05.2018 and 22.03.2018 passed by respondent nos.1 and 2 respectively, thereby seeking direction to respondent no.3 to release the petitioner on furlough for 28 days on execution of personal bond and surety.

3] It is the case of the petitioner that on 30.06.2015, he has been convicted by the Additional Sessions Judge, Ahmednagar, for the offence punishable under Sections 302 and 120B of the Indian Penal Code, and pursuant to it, he is undergoing life imprisonment at Yerwada Central Prison, Pune. The petitioner filed an application praying therein to release him on furlough to respondent no.3. After receipt of the said application, respondent no.3 forwarded the same to respondent no.2. On 22.03.2018, respondent no.2 rejected the application of the petitioner for furlough on the ground

that his Appeal is pending before the High Court. Being aggrieved by the said order, the petitioner filed an Appeal before respondent no.1. By order dated 21.05.2018, respondent no.1 was pleased to reject the said appeal. Hence this Writ Petition.

4] Learned counsel appearing for the petitioner submits that Rule 3 [b] 11 of the Government Notification dated 26th August, 2016 issued by the Department of Home has been withdrawn by the State Government, and as a result merely because Appeal of the convict is pending in the Higher Court or any other Court filed against him, either by the Central Government or State Government, is no ground to reject the application to release the convict on furlough. This position is not disputed by the learned APP. It is submitted that another ground to reject the application of the petitioner to release him on furlough is an adverse police report. It is submitted

that the concerned Police Officer has given casual report without stating therein any reason for giving such adverse report. It is submitted that the petitioner was released on furlough on as many as 11 occasions and every time he reported on time, except on one occasion when he reported late by two days. Therefore, he submits that the Petition deserves to be allowed.

5] On the other hand, learned APP appearing for the respondent-State relying upon the affidavit-in-reply of the respondents submits that the petitioner was released on furlough leave on 23.04.2016 by the order of Deputy Inspector General of Prisons, Western Region, Yerwada, Pune. He was supposed to surrender to the Jail on 21.05.2016. He did not surrender within time, hence Crime No.57/2016 was registered against him at MIDC Police Station, Ahmednagar, for the offence under Section 224 of the IPC. Due

to misconduct of the petitioner, he was transferred from Visapur Open District Prison to the Yerwada Central Prison on administrative ground on 17.10.2017 to undergo life imprisonment. It is further submitted that the application was sent to the Competent Authority i.e. the Deputy Inspector General of Prisons, Western Region, Yerwada, Pune and the copy of the application forwarded to Sub-Divisional Police Officer, Ahmednagar for police report. Thereafter, the adverse police report was received. Due to the adverse police report and pendency of the case against the petitioner, the prayer to release petitioner on furlough was rejected by the Dy.Inspector General of Prisons, Western Region, Yerwada, Pune, keeping in view the provisions of Rule 4 of the Notification dated 26.08.2016, when the prisoners shall not be granted furlough; sub-rule [11] whose appeal in conviction in

higher court of any other cases filed against them, either by central Government or any of the State Government in any of the courts are pending and for which bail is not granted to him / her by the concerned courts.

6] It is further submitted that being aggrieved by order dated 22.03.2018, the petitioner has preferred an Appeal before the Additional Director General of Police [Prisons], State of Maharashtra, Pune. The said Appeal was rejected by order dated 29.05.2018. The Notification dated 26.08.2016 is amended by the Government Notification dated 16.04.2018 and the provision in the Notification dated 26.08.2016, Rule 4 sub-rule [11] is deleted. In view of the Notification dated 16.04.2018, the petitioner may file fresh application for furlough leave, which would be decided according to the provisions made in the Notification dated 16.04.2018.

7] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, and the learned APP appearing for the respondent-State. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, reply filed by the respondents and the unreported judgment in the case of *Lala @ Anurag son of Prakash Asare Vs. State of Maharashtra & another* in Criminal Writ Petition No.276 of 2012, decided on 11th June, 2012. It is pertinent to mention that furlough and parole are granted to the convicts to enable the inmate to maintain continuity with his family and deal with family matters, to save him from evil effects of continuous prison life, to enable him to maintain and develop his self confidence and to enable him to develop constructive hope and active interest in life. It is admitted position that the petitioner is in jail since

the year 2004, and he was released on as many as 11 occasions, and except on one occasion when he reported late by 2 days, that too *suo motu*, on all other occasions the petitioner has reported back within time to the jail. It further appears that when the petitioner reported late by two days on 23rd April, 2016, after availing furlough leave, the offence was registered against him, and the remissions might have been deducted for overstay of two days. It is also important to mention that on the said occasion also, the petitioner reported back *suo motu*. It is also relevant to mention that merely because appeal of the petitioner is pending before the Higher Court, is no ground to refuse him furlough. The police report does not indicate any specific reason why the petitioner cannot be released on furlough. Admittedly, the petitioner was released on furlough leave on 2nd March, 2017 and reported back on time.

The said release was after the offence was registered against the petitioner for his overstay of two days in the year 2016. So far as the police report is concerned, the same does not indicate any specific reason to refuse furlough leave to the petitioner.

8] For the reasons afore-stated, we are inclined to allow this Petition. Accordingly, the Writ Petition is allowed in terms of prayer clause-B. On completion of usual procedure and fulfillment of conditions, the respondents shall release the petitioner on furlough forthwith.

9] The Rule is made absolute on above terms. The Writ Petition stands disposed of accordingly. No order as to costs.

[V . K . JADHAV]
JUDGE

[S . S . SHINDE]
JUDGE