

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1109 OF 2018

Vijay S/o Waman Mane
Age-Major, Occ: Nil C.No. 7762,
R/o At present in Central Prison,
Aurangabad.

...PETITIONER

VERSUS

1. The State of Maharashtra
2. Deputy Inspector General
Central Prison, Aurangabad.
3. The Superintendent of
Central Prison, Aurangabad.

...RESPONDENTS

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Mrs.B.B. Gunjal, Advocate for Petitioner
Mr.A.R. Kale, A.P.P. for Respondent Nos.1 to 3.

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**CORAM: S.S. SHINDE AND
K.K. SONAWANE, JJ.**

DATE OF RESERVING JUDGMENT: 27th NOVEMBER, 2018

DATE OF PRONOUNCING JUDGMENT: 12th DECEMBER, 2018

JUDGMENT(PER S.S. SHINDE, J.):

Rule. Rule made returnable forthwith and heard

finally with the consent of learned counsel appearing for the parties.

2. This Petition is filed with the following substantive prayer :

"B) By issuing appropriate writ or direction in the like nature the order passed by the Respondent No.2 i.e. the DY. Inspector General Central Prison, Aurangabad dated 23-03-2018 may kindly be quashed and set aside (Exh."A").

3. It is the case of the petitioner that he is undergoing sentence of imprisonment as per the order dated 22nd October, 2014, passed by the Additional Sessions Judge, Udgir, Dist. Latur. The petitioner has made application on 23rd March, 2018 to Respondent No.2 seeking furlough leave. Respondent No.2 called for the report from Sub-Divisional Police Officer, Nilanga. After receipt of the said report of Respondent No.2, which according to the petitioner is favourable to him,

has rejected the application of the petitioner on 23rd March, 2018. Hence this Writ Petition.

4. Learned counsel appearing for the petitioner submits that the order passed by Respondent No.2, rejecting the application of the petitioner for releasing him on furlough, is against the principles of natural justice. Learned counsel appearing for the petitioner submits that one of the reason stated by Respondent No.2 rejecting his application is that when earlier the petitioner has been released on furlough, he has overstayed for 86 days. In this respect, learned counsel submits that already the Respondent authorities have punished the petitioner for overstaying 86 days by registering the criminal case against him under Section 224 of the Indian Penal Code (for short, "I.P. Code) and also remissions have been deducted. Therefore, on the same reason, the Respondent Authority could

not have rejected the application of the petitioner. Therefore, learned counsel appearing for the petitioner submits that the Petition may be allowed.

5. On the other hand, learned A.P.P. appearing for the Respondent/State and its Officials, by relying upon the contents of the impugned order and the affidavit in reply filed on behalf of Respondent Nos.2 and 3, submits that the prayer of the petitioner to release him on furlough has rightly been turned down by Respondent No.2. Learned A.P.P. further invites our attention to the reasons assigned by Respondent No.2 in the impugned order while rejecting the application of the petitioner to release him on furlough and submits that the Petition may be rejected.

6. We have given careful consideration to the submissions of learned counsel appearing for

the Petitioner and learned A.P.P. appearing for the Respondent/State. We have carefully perused the impugned order passed by Respondent No.2. Upon careful perusal of the impugned order passed by Respondent No.2, it appears that the application filed by the petitioner to release him on furlough has been rejected mainly on the grounds viz:- firstly, the case of the petitioner is not recommended by the Superintendent of Jail, secondly when the petitioner was released in the year 2015 on furlough leave, he overstayed for 86 days, and therefore the offence under Section 224 of the I.P. Code is registered against the petitioner and thirdly, if the petitioner is released on furlough, he may abscond and may not come back to undergo the remaining sentence and fourthly, the furlough is not a right of convict.

7. Upon careful considering the case in its entirety, in our opinion, first, third and fourth

grounds mentioned in the impugned order, are not very significant. However, the second ground viz:- when the petitioner was released on furlough, he has overstayed for 86 days, is a valid ground raised by the Respondent Authority. However, as rightly submitted by learned counsel appearing for the petitioner, already the remissions as against 86 days overstay has been deducted by the Respondent Authority, and therefore, the said ground should not have been taken into consideration to reject the application of the petitioner to release him on furlough.

8. In the light of discussion hereinabove, the impugned order dated 23rd March, 2018, passed by Respondent No.2 is quashed and set aside. The petitioner to apply afresh forthwith, with Respondent authorities, requesting to release him on furlough. In case such application is filed by the petitioner, we direct the Respondents to

decide the said application, on its own merits, as expeditiously as possible, and preferably within four weeks from the date of receipt of such application, without raising the same objections/grounds, which have been raised in the impugned order.

9. The Writ Petition is partly allowed. Rule made absolute in above terms. The Writ Petition stands disposed of, accordingly.

(K.K. SONAWANE, J.)

(S.S. SHINDE, J.)

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