

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

CRIMINAL WRIT PETITION NO.1459 OF 2018

Atmaram s/o Deivan Mundhe,
Age: 27 Years, Occ. Nil C.No.7748
R/o. At Devgaon, Tal.Kaij, Dist.Beed
At present in Central Prison
at Aurangabad. **.. PETITIONER**

VERSUS

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

.. RESPONDENTS

...
Mrs.B.B.Gunjhal, Advocate for the petitioner
Mr.A.R.Kale, APP for the Respondent/ State
...

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

Reserved on : 04.12.2018
Pronounced on : 07.12.2018

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 with the following prayers:

B] By issuing appropriate writ or direction in like nature the order passed by the Respondent No.2 [i.e. Dy. Inspector General Central Prison, Aurangabad] dated 23-07-2018 may kindly be quashed and set aside. Exh."C"

C] By issuing appropriate writ or direction in like nature the Respondent No.3 [i.e. Superintendent of Central Prison Aurangabad] may kindly be directed to release the Petitioner on Furlough Leave.

3] It is the case of the petitioner that the petitioner is convicted for the offences punishable under Sections 376 (G) and 506 r/w. 34 of the Indian Penal Code and under Section 3 (1) (XII), 3 (2) (5) and 4 of the Scheduled Castes and Scheduled Tribes [Prevention of Atrocities] Act, 1989 and sentenced to suffer imprisonment for life.

The petitioner filed an application for release him on furlough to respondent no.2 on 12th April, 2018. After receipt of the said application, respondent no.2 has called report from the concerned Police Station. Thereafter, the concerned Police Station has filed its report, stating therein that the father in law of the petitioner is ready to stand as surety of the petitioner. Even the persons, who are residing at village Dhakanwadi, have no objection in respect of release the petitioner on furlough. Accordingly, the concerned Police Station has filed report in favour of the petitioner. After receipt of the said report, respondent no.2 has rejected the application of the petitioner, by order dated 23rd July, 2018, on the ground that the petitioner is convicted for the offence punishable under Section 376 of the I.P. Code. Hence this Petition.

4] Learned counsel appearing for the petitioner submits that merely because the petitioner is convicted for the offence punishable under Section 376 of the I.P. Code, is no ground to reject his application to release him on parole/furlough. She submits that, respondent no.2, relying on the Notification dated 16th April, 2018, has rejected the application of the petitioner, by order dated 23rd July, 2018. In fact, the petitioner has applied for furlough on 12th April, 2018, before issuing the Notification dated 16th April, 2018. Therefore, the order passed by respondent no.2, rejecting the application of the petitioner for furlough, deserves to be quashed and set aside. Learned counsel, therefore, submits that the Petition may be allowed.

5] On the other hand, learned APP appearing for the respondent-State relying upon the averments in the affidavit-in-reply

filed on behalf of respondent nos.2 and 3 submits that the petitioner is a convict of life imprisonment. Considering the Notification dated 16th April, 2018, the petitioner is not entitled to release on furlough. Considering the facts and circumstances of the present case, respondent no.2 has rightly passed the impugned order, rejecting the application of the petitioner for furlough. Therefore, he submits that the Petition may be rejected.

6] We have given careful consideration to the submissions of the learned counsel appearing for the petitioner, and learned APP appearing for the respondent-State. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, affidavit in reply filed by the respondents, and in particular Notification dated 16th April, 2018, issued by the Home Department, Government of Maharashtra,

Mumbai. However, it appears that, the petitioner has applied for furlough on 12th April, 2018, before issuing Notification dated 16th April, 2018. In that view of the matter, the petitioner's application to release him on furlough could not have been rejected relying upon the aforesaid Notification. It appears that even the concerned Police Station has also filed report in favour of the petitioner.

7] In that view of the matter, we quash and set aside the impugned order dated 23rd July, 2018. The application filed by the petitioner for furlough stands restored to its original file. We direct respondent nos.2 and 3 to re-consider the application of the petitioner within two weeks from the receipt of this order. The respondent authorities shall not reject the prayer of the petitioner to release him on furlough / parole for the same reasons, which are stated in the

impugned order. The respondent authorities to act upon the same police report, which has been already received, without insisting for the fresh report.

8] Rule is made absolute on above terms. Writ Petition stands disposed of.

[K.K.SONAWANE]
JUDGE

[S.S.SHINDE]
JUDGE

DDC