

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1561 OF 2017

Netaji Nanasaheb Tile,
Age Major, Occupation Nil
No. C/9653, R/o. At Present
Nashik Road, Central Prison,
Nashik.

.. Petitioner.

VS.

1. The State of Maharashtra,
Through the Add. Dir. General Police
and Inspector General (Prison) Pune
 2. Dy. Inspector General (Prison) Aurangabad
(copy for respondents 1-3 to be served on
G. P. High Court, Bench at Aurangabad
 3. The Sub-divisional Police Officer,
Shirdi.
- .. Respondents

Ms. Sakshi Joshi, Advocate (Appointed) for the petitioner.
Mr. S. W. Mundhe, Additional Public Prosecutor for
respondents / State.

**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI. JJ.
DATE : 19-01-2018**

ORAL JUDGMENT (Per Smt. Vibha Kankanwadi. J.)

1. Rule. Rule made returnable forthwith with the consent of
learned counsels for the parties, the petition is heard finally at the

stage of admission.

2. The petitioner is a convict prisoner serving life sentence at Nashik Road Central Prison, Nashik. He has spent four years and one month in the prison. He preferred an application to the respondent No.3 for grant of furlough leave on 29-11-2016. Report from Sub-Divisional Police Officer, Shirdi was called. It was found that the surety offered by Petitioner was ready to fulfill the condition of furlough. The application has been rejected by respondent No.2 on 03-03-2017. After the rejection of the said application, the petitioner had preferred appeal as per Rule 17, 4 (6) of the Prisons (Bombay Furlough and Parole) Rules and as per Rule 4 (B) 11 of Government Resolution dated 10-08-2017. However, the appellate authority i.e. the respondent No.1 has also rejected the application. These orders are challenged in this petition.

3. It has been contended that a proper reasons have not been given by the authorities. The police report in fact in the matter of the petitioner is favourable to him. The report regarding the conduct of the petitioner in prison is also not adverse. There is also no adverse report regarding petitioner being dangerous to the public peace or law and order. Under such circumstance, the respondent ought not to

have rejected the application and the appeal. The petitioner, therefore, prayed for quashing and setting aside the orders of the respondents No.1 and 2 and prayed for direction to release him on furlough leave.

4. The petition has been objected on the ground that the appeal preferred by the petitioner is still pending and perusal of the documents of the petitioner would show that the leave cannot be granted to him. Reference has also been made that, as per the decision in *Rubina Suleman Memon Vs. The State of Maharashtra, Criminal Writ Petition No. 4017 of 2016*, the furlough cannot be granted. Proper reasons have been assigned by both the authorities, and therefore, there is absolutely no necessity to interfere in those orders.

5. In order to cut short I would like to say that, the learned counsels appearing for the parties have made submissions in support of their contentions. Only two grounds have been mentioned for rejecting the application of the petitioner for furlough, one is that the appeal preferred by the petitioner is still pending wherein he has challenged the conviction awarded to him for the offence punishable under Section 302, 323 of the Indian Penal Code. The second is that,

as per the resolution passed by the State Government on 26-08-2016, in view of the decision in *Rubina Suleman Memon Vs. The State of Maharashtra* case, furlough cannot be granted.

6. Important point to be noted is that, the furlough can be rejected only in exceptional cases as such if the convict is convicted for the offence against the State or the offence was under any terrorist activities act. Here the petitioner has been convicted for the offence punishable under Section 302, 323 of the Indian Penal Code, therefore the resolution and the decision in *Rubina's* case will not come in way. So also pendency of the appeal challenging the conviction of the petitioner is not a ground for rejection of the furlough leave for the petitioner. No doubt such leave cannot be asked as of right but definitely there are rules under which such leave can be claimed. If the authority is intending to reject the application then proper reasons are required to be assigned. The reasons given by respondents No.1 and 2 are not at all proper reasons. It is also required to be seen that, there was no adverse report against the petitioner indicating that if he is released on furlough leave then it would be dangerous to the public at large. There is also no adverse report regarding his conduct in the prison, the police report and jail is rather in his favour. Under such

circumstance, these aspects ought to have been considered by the respondents No.1 and 2 before rejecting his application.

7. For the reasons aforesaid, the petition deserve to be allowed. Rule is therefore made absolute in above terms. The order passed by respondent No.2 dated 03-03-2017 and the order passed by respondent No.1 on 10-08-2017 rejecting the application and appeal filed by the petitioner respectively for his furlough leave are hereby quashed and set aside. Respondents are directed to release the petitioner on furlough leave as per rules.

8. The learned counsel Ms. Saakshi Joshi appointed for the petitioner has rendered able assistance to the Court, her fees is quantified at Rs.3,000/- (three thousand).

[SMT. VIBHA KANKANWADI]
JUDGE

[PRASANNA B. VARALE]
JUDGE

vjg/-.