

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

Criminal Writ Petition No. 01562 of 2017

District : Osmanabad

Kalidas Kundlik Lomte (C-10174),
Age : 48 years,
Occupation : Nil,
At Present : Circule No.4.5,
Central Prison, Nashik Road,
Nashik.

.. Petitioner.

versus

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya,
Mumbai - 400 032.
2. Spl. IG Police (Prison)(HQ),
2nd Floor,
Old Central Building,
Pune - 1.
3. Dy. Inspector General of
Prison,
Central Region,
Aurangabad.
4. The Superintendent of
Central Prison,
Nashik Road,
Nashik.

.. Respondents.

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*Mr. Digambar P. Sathe, Advocate (appointed),
for the petitioner.*

*Mr. K.S. Patil, Addl. Public Prosecutor, for
respondent nos.01 to 04.*

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

DATE : 31ST JANUARY 2018

ORAL JUDGMENT [*Per Prasanna B. Varale, J.*] :

Heard learned Counsel (appointed) for the petitioner and learned Addl. Public Prosecutor for the respondents.

02. The petitioner - convict (C-10174), namely, Kalidas Kundlik Lomte, is before this Court challenging the order dated 07.08.2017, passed by respondent no.02 - Spl. IG Police (Prison), thereby rejecting the prayer of the petitioner for grant of furlough leave.

03. Perusal of the material placed on record show that the prayer for furlough leave was rejected on many fold grounds. These grounds are, (1) there is adverse police report against the petitioner, (2) an appeal filed by the petitioner is pending before the High Court, (3) there is a threat of life to the eye witness, (4) the petitioner is not entitled for the said benefit in view of the judgment of this Court delivered at principal seat, in Criminal Writ Petition No. 4017 of 2016, in the matter of *Smt. Rubina Suleman Memon Vs. The State of Maharashtra & others*, on 22nd December 2016.

04. Learned Counsel appearing for the petitioner

vehemently submitted that all these grounds raised for rejection for furlough leave are clearly unsustainable. It was the submission of the learned Counsel, that merely because an appeal filed by the petitioner is pending before this Court, cannot be a reason for rejection of furlough leave. Filing of an appeal is a statutory right provided and if somebody avails the remedy provided under the law, cannot be a reason for the authorities to reject the application seeking furlough. Learned Counsel then submitted that the ground of adverse police report is also vague and unsustainable. Learned Counsel also submitted that the other ground, that the petitioner is not entitled for the furlough leave in view of the judgment of this Court in the matter of *Smt. Rubina Suleman Memon (supra)*, is also a ground applied mechanically. He submitted that the Division Bench of this Court in the matter of *Smt. Rubina Suleman Memon (supra)*, considered the case of the petitioner Smt. Rubina Suleman Memon, who was a convict under the Terrorist and Destructive Activities Act, 1987, and rigors of the notification dated 23.02.2012, more particularly, Sub-Rule 13 of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959, were fully applicable to the petitioner therein, which is not the case of the petitioner. The petitioner is not suffering punishment for any act under the provisions of TADA. Thus, learned Counsel for the petitioner prays for quashing and setting aside the order impugned and allowing the petition.

05. Learned Addl. Public Prosecutor appearing for the respondents opposes the petition.

06. Learned Addl. Public Prosecutor has made available, copy of the police report. One of the reasons assigned in the order impugned is that there is an adverse police report against the petitioner. In juxtaposition to this ground, if the report is perused, interestingly, the report states that there was a surety standing for the petitioner expressing his willingness and was also ready to submit an undertaking and inspite of this fact, the report states that the surety is unable to control the petitioner. On what material this satisfaction is arrived at by the authorities, is not at all reflected in the said report. Thus, it is only a mechanical objection raised and there is merit in the submission of the learned Counsel for the petitioner. Amongst other grounds, one of the grounds in the impugned order is about threat to the witness i.e. an eye witness. In the report, it is only stated that there is a threat to the son of the petitioner who is 17 years of age and is prosecuting his studies at Pune. Thus, even this ground holds no water. Learned Counsel for the petitioner was also justified in submitting that the judgment of Division Bench of this Court in the matter of *Smt. Rubina Suleman Memon* (*supra*) will not be applicable to the present petitioner for the reason that the facts of the case

of the petitioner and the facts of the case in the matter of *Smt. Rubina Suleman Memon (supra)* are altogether different. Considering all these grounds, we are of the opinion that the learned Counsel for the petitioner has made out a case for grant of relief as prayed in the petition.

07. In the result, the criminal writ petition is allowed.

The impugned order dated 07.08.2017 passed by respondent no.02 is quashed and set aside and the petitioner is directed to be released on furlough leave as per entitlement under the Prisons (Bombay Furlough and Parole) Rules, 1959. The petitioner is directed to comply with the necessary formalities. It is also directed that the petitioner shall not enter into the jurisdiction of Pune city and town Dhoki (District Osmanabad) while enjoying the benefit of furlough leave.

08. Learned Advocate Mr. D.P. Sathe was appointed to represent case of the petitioner. His fees are quantified at Rs. 3,000/- [Rupees three thousand].

(**Smt. Vibha Kankanwadi**)
JUDGE

(**Prasanna B. Varale**)
JUDGE

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