

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

Criminal Writ Petition No. 01659 of 2017

District : Parbhani

Anna @ Dattarao s/o. Uttamrao
Jawale (C-10927),
(Appeal through Jail,
Nashik Road, Central Prison,
Jail Road, Nashik),
Maharashtra State.

.. Petitioner.

versus

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai.
2. The Inspector General of
Prisons,
Maharashtra State,
Pune - 1.
3. The Deputy Inspector General
of Prisons (Central Region),
Aurangabad (Maharashtra).
4. The Jailor,
Nashik Road, Central Prison,
Jail Road, Nashik,
Maharashtra.

.. Respondents.

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*Mr. Prasad V. Jadhavar, Advocate (appointed),
for the petitioner.*

*Mr. S.W. Munde, 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] :

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

02. The petitioner - convict (C-10927), namely, Anna @ Dattarao s/o. Uttamrao Jawale, is before this Court challenging the order dated 03.04.2017 passed by respondent no.03 - Dy. I.G. of Prisons, thereby rejecting the prayer of the petitioner for grant of furlough leave. The petitioner has also challenged the order dated 18.08.2017 passed by respondent no.02 - I.G. of Prisons, thereby rejecting the appeal filed by the petitioner.

03. Perusal of the material placed on record show that the prayer for furlough leave was rejected mainly on the ground that the appeal filed by the petitioner against the conviction and sentence is pending before this Court. One of the grounds mentioned for rejection of the prayer for furlough is, in the light of 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. So also, there is no recommendation from Superintendent of Jail.

04. Learned Counsel appearing for the petitioner vehemently submitted that all these grounds raised for rejection of 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, in fact, Superintendent of Police, Parbhani, has given a report, that there is no possibility of disturbance in peace and tranquility, so also, there will be no threat of life to the complainant and witnesses, if the petitioner is released on furlough leave. 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 orders impugned and allowing the petition.

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

06. Pendency of appeal against conviction and sentence, cannot be a ground for rejection for furlough leave. 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. Moreover, concerned Superintendent of Police has given a report, that she has no objection if the petitioner is released on furlough leave. 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 03.04.2017 passed by respondent no.03, so also, order dated 18.08.2017

passed by respondent no.02, are 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.

08. Learned Advocate Mr. P.V. Jadhavar 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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