

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

Criminal Writ Petition No. 01660 of 2017

Anwar Gulam Hussain Shaikh,
Age : Major,
Occupation : Convict No. C/8015,
R/o. At present Nashik Road
Central Prison, Nashik.

.. Petitioner.

versus

1. The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai - 32.
2. The Additional Director
General of Police
And Inspector General of
Prison & Maharashtra State,
Pune - 1.
3. The Deputy Inspector General
of Central Prison,
Aurangabad.

.. Respondents.

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*Mr. A.V. Lavte, Advocate (appointed), for the
petitioner.*

*Mr. K.S. Patil, Addl. Public Prosecutor, for
respondent nos.01 to 03.*

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

DATE : 05TH FEBRUARY 2018

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

Heard.

02. In challenge to the order passed by the authority competent to consider the application seeking furlough leave, learned Counsel appointed for the petitioner, submits that the reasons assigned in the order are clearly untenable and resultantly the order of rejection is unsustainable. Learned Counsel for the applicant invited our attention to the material placed on record.

03. The petitioner is convict suffering the punishment at Central Prison, Nashik, as convict no. 8015. On his application, the competent authority called the report. The rejection order show that the prayer of the petitioner - convict is turned down on three grounds, (1) there is adverse police report, (2) the surety standing for the convict / petitioner cannot control the petitioner, and (3) an appeal is filed by the petitioner and the same is pending before this Court.

04. On perusal of the material placed on record and more particularly, reply filed by the State, we find considerable merit in the submission of the learned Counsel for the petitioner. Learned Counsel invited our attention to the chart placed on record submitted by the authorities themselves. The chart show that on earlier four occasions, the petitioner was granted parole leave and on two occasions, the petitioner was granted furlough leave. On all these six occasions, the petitioner had reported to the

prison authorities on the due date. There is nothing adverse in the said chart to suggest that the petitioner at any point of time was reporting the prison authorities belatedly. Thus, history of the petitioner, in so far as, obtaining leaves, namely, parole and furlough, show that there is nothing adverse against the petitioner.

05. In so far as other grounds raised, namely, an adverse police report and the surety not competent enough to control the petitioner, we find that even this ground holds no water. Copy of the report placed on record at Exhibit R-2 clearly show that the sister of the petitioner expressed her willingness to stand as surety for the petitioner and there is nothing in the report to show that how sister of the petitioner is not competent enough to control the petitioner. The third ground, that the petitioner if released may create some act causing threat to law and order situation is also untenable as the report states that in the vicinity, the construction work of rehabilitation is going on and elections of municipal council were due. Now, merely because some construction activities were going on and municipal council or municipal corporation elections were due, same cannot lead to form an opinion that the release of the petitioner would result in a threat to public law and order. There must be some concrete material so as to arrive at a conclusion that release of the petitioner would adversely affect the law and order situation in the city, town or vicinity.

06. The other ground, namely, appeal filed by the petitioner is pending before this Court, also cannot a ground to turn down the request to grant furlough leave. If a convict is approaching higher forum for availing the remedy available under the statute, that cannot be a reason to turn down the prayer for furlough leave. Considering all these aspects, we are of the opinion that the learned Counsel for the petitioner has made out a case for grant of relief prayed in the petition.

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

The impugned order dated 07.04.2017 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. A.V. Lavte 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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