

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

**Criminal Writ Petition No. 01798 of 2017**

District : Nandurbar

Bhatusingh Virangaya Raotale,  
Age : 68 years,  
Occupation : Undergoing  
Jail sentence at Nashik Road,  
Central Jail, Nashik.

.. Petitioner.

**versus**

1. The State of Maharashtra,  
Through its Secretary,  
Home Department, Mantralaya,  
Mumbai - 32.

2. Deputy Inspector General  
of Prison,  
Nashik Division,  
Nashik.

3. The Superintendent,  
Central Jail, Nashik.

.. Respondents.

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*Mr. S.D. Kaldate, Advocate (appointed), for the  
petitioner.*

*Mr. D.R. Kale, 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. The petitioner - convict (C-10213), namely, Bhatusing Virangaya Raotale, is before this Court challenging the order dated 05.05.2017 passed by respondent no.02 - Dy. I.G. of Prisons, Aurangabad, thereby rejecting the prayer of the petitioner for grant of furlough leave. The petitioner has also challenged the order dated 13.09.2017 passed by the Addl. D.G.P. & I.G. of Prisons, Pune, 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 on many fold grounds. These grounds are, (1) an appeal filed by the petitioner is pending before this Court, (2) 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, and (3) there is no recommendation of 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 further 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. Learned Counsel also submitted that the ground that there is no recommendation of Superintendent of Jail is mechanically applied.

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

06. So far as the ground for rejection of prayer

for furlough leave, that the appeal filed by the petitioner is pending before this Court, learned Counsel for the petitioner was right in submitting that pendency of appeal cannot be a reason to reject the prayer as it is a statutory right of a convict. 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. So far as the ground, that there is no recommendation of Superintendent of Jail, same can be called by the higher authorities while considering the application for furlough. 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 05.05.2017 passed by respondent no.02 - Dy. I.G. of Prisons, Aurangabad, so also order dated 13.09.2017 passed by the Addl. D.G.P. & I.G. of Prisons, Pune, 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. S.D. Kaldate 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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