

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 3548 OF 2017**

Gulam Dastagir @ Budda Rahimtulla]
Shaikh, Age 34 years, residing at]
Chirag Nagar, Kaju Tekadi,]
Ghatkopar (West) Mumbai-400086]
(At present lodged at Kolhapur]
Central Prison, Kalamba, Kolhapur]
as Convict No. C/4072].. Petitioner

Vs.

1) The State of Maharashtra]
]]
2) The Inspector General of Prison]
Western Region, Yerawada]
Pune,]
]]
3) The Superintendent,]
Kolhapur Central Prison, Pune].. Respondents

....

Mr. Daulat G. Khamkar Advcoate for Petitioner
Mr. Arfan Sait, APP for State

....

**CORAM : SMT.V.K.TAHILRAMANI ACTING C.J.
AND M.S.SONAK, J.**

DATED : APRIL 23, 2018

ORAL JUDGMENT :[PER SMT. V.K.TAHILRAMANI, ACJ,]:

1 Heard both sides.

2 The petitioner preferred an application for furlough on 5.7.2016. The said application was rejected by order dated 15.2.2017. Being aggrieved thereby, the petitioner preferred an appeal. The said appeal was dismissed by order dated 19.7.2017, hence, this petition.

3 The application of the petitioner came to be rejected mainly on the following grounds:

(1) that if the petitioner is released on furlough, there would be danger to the family members of the deceased who have taken strict objection to the petitioner being granted furlough;

(2) that the appeal of the petitioner against his conviction and sentence is pending before a higher forum;

(3) that the petitioner is involved in a serious offence and if he is released on furlough, there will be possibility of breach of law and order situation.

(4) that on 30.8.2012 when Circle Officer Shri. Mankar was doing his duty in the circle office, at that

time, suddenly the petitioner entered into the office and he had carried human excreta in a plastic bag which he threw on Shri. Mankar. Thereafter the petitioner went outside the office and caused himself injuries with a small thin scrap of tin which he had with him.

4 As far as first ground is concerned, Mr. Khamkar submitted that witnesses are residing in Mumbai and the petitioner is willing to spend his furlough period at Kolhapur which is far away from Mumbai. He submitted that hence, this ground should not come in the way of petitioner being granted furlough.

5 As far as the second ground i.e. the appeal of the petitioner is pending in higher forum is concerned, Shri. Khamkar submitted that by Notification dated 16.4.2018 the said criteria i.e. if the appeal against conviction is pending before a higher forum, the prisoner will not be eligible to be granted furlough, has been deleted. He submitted that this ground is also no longer a good ground to deny furlough to the

petitioner.

6 Even if we find some merit in the submissions made by Shri. Khamkar in relation to first two grounds, the fact remains that we find the conduct of the petitioner in the prison is highly reprehensible. In this view of matter and the fact that the petitioner is involved in a serious offence, we find this ground to be sufficiently serious enough to deny furlough to the petitioner. In addition, there is one more ground i.e. the authorities are apprehending that if the petitioner is released on furlough, there will be law and order problem. Looking to the conduct of the petitioner in the prison and his attitude and mentality, we find that this apprehension of the authorities that there will be a law and order problem if the petitioner is released on furlough, cannot be said to be without any basis. In this view of the matter, we are not inclined to grant furlough to the petitioner. Petition is therefore, rejected. Rule is discharged.

M.S.SONAK, J.

ACTING CHIEF JUSTICE

Kandarkar