

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL WRIT PETITION NO. 5474 OF 2018

Mohammad Sharif Mehboob Badshah Khan. ... Petitioner.
V/s.
The State of Maharashtra. ... Respondent.

Ms.P.P.Shinde, APP for the respondent- State.

CORAM : A.S.OKA & SANDEEP K. SHINDE, JJ.

DATE : 13th December 2018.

P.C.:

Rule. The learned APP waives service. Forthwith taken up for final disposal.

2. This writ petition is received through jail. The petitioner has been convicted by order dated 31st January 2009 for the offence punishable under section 302 read with 34 of Indian Penal Code. The petitioner applied for grant of furlough leave under the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959. The petitioner was denied furlough leave by relying upon grounds set out in sub-rules (4), (6) and (10) of rule 4 as amended in the year 2018. The appeal preferred by the petitioner against rejection of furlough leave was dismissed by the appellate authority vide order dated 27th September 2018. Sub-rule (4) of rule 4 provides for denial of furlough leave to prisoners whose release is not recommended by the Police on the ground of public peace and tranquility. The only ground given is that there is possibility that after the petitioner is released on furlough leave, out of vengeance, he may

create danger to the lives of the families of complainant and witnesses. It cannot be said that this ground is a ground of public peace and tranquility. Sub-rule (6) of rule 4 is applicable when the work and conduct of the prisoner in the opinion of the Superintendent of Prison is not satisfactory. We find that there is no such opinion recorded. The order records that law and order situation will be created as the petitioner is likely to commit another offence. However, the concept of public peace and tranquility is different.

3. As regards sub-rule (10) of rule 4, it is applicable when there is a default in surrendering after release on parole or furlough. There were two such defaults committed by the petitioner. One in the year 2011 when he was released on parole. He reported late by 120 days. The other one is in the year 2014 when he was released on furlough leave. There is delay of 180 days in reporting back. Both the defaults are of the period 2011 and 2014. Thereafter, four years have lapsed. Therefore, in the facts of the case, a disqualification under sub-rule (10) of rule 4 is not attracted.

4. In the light of the above discussion, we set aside the impugned orders dated 9th July 2018 and 27th September 2018 and direct the Deputy Inspector General of Prisons, Central Zone, Aurangabad to reconsider the case of the petitioner for grant of furlough leave in the light of observations made in the judgment. Appropriate decision shall be taken within a period of one month from the date this order is uploaded. Writ petition is disposed of accordingly.

(SANDEEP K. SHINDE, J.)

(A.S.OKA, J.)