

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.5 OF 2019

Dumya @ Lakhan @ Inamdar Shrimant Byhosale,
Age-30 years, Occu:Nil, Convict No.7853,
R/o-At present in Central Prison,
Dist-Aurangabad.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
- 2) The Deputy Inspector General of
Central Prison, Aurangabad,
- 3) The Superintendent of
Central Prison, Aurangabad,
Dist-Aurangabad.

...RESPONDENTS

...

Mrs.Bharati B. Gunjal Advocate for Petitioner.
Mr.K.S. Hoke Patil, A.P.P. for Respondent
Nos. 1 to 3.

...

**CORAM: S.S. SHINDE AND
R.G. AVACHAT, JJ.**

DATE OF RESERVING JUDGMENT : 30TH JANUARY, 2019

DATE OF PRONOUNCING JUDGMENT: 4TH FEBRUARY, 2019

JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition takes exception to the order dated 10th July, 2018 passed by the Deputy Inspector General of Prisons, Central Region, Aurangabad, thereby rejecting the request of the Petitioner to release him on furlough.

3. It is the case of the Petitioner that the he has been convicted by the Special Judge, MCOC Act, Aurangabad by order dated 31st July 2014, passed in Special Case No.10 of 2009, for the offence punishable under Section 395 read with 120-B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years. The Petitioner has also been convicted for the offence punishable under Section 3(1)(ii) of the MCOC Act

read with 120-B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years. All the sentences are directed to be run concurrently. Yet in another sessions case, the Petitioner has also been convicted by the Additional Sessions Judge, Barshi by order dated 7th October, 2016, passed in Sessions Case No.86 of 2014, for the offence punishable under Section 325 read with 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for seven years. Presently the Petitioner is lodged in Central Prison, Aurangabad, and till today the Petitioner has undergone 9 years and 6 months of imprisonment.

4. It appears that the Petitioner has applied for furlough, however by the impugned order dated 10th July, 2018, his application has been rejected. In the impugned order, firstly it is mentioned that the report submitted by the Sub

Divisional Police Officer, Barshi, is adverse and therefore furlough cannot be granted. Secondly it is mentioned in the impugned order that the case of the Petitioner is not recommended by the Superintendent of Prison. Thirdly, it is mentioned in the impugned order that Petitioner is undergoing sentence for the offence under Section 395 of the Indian Penal Code and for the convicts of such offence, furlough cannot be granted. Fourthly, it is mentioned that the Petitioner is undergoing sentence in serious offence under the provisions of MCOC Act, and lastly it is mentioned that furlough is not right of the convict. Accordingly, by invoking the provisions of Rule 4(2), 4(4) and 4(6) of Chapter 37 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short "the Rules of 1959"), as amended by the Notification dated 16th April, 2018, issued by the Government of Maharashtra in its Home Department, the application of the Petitioner came to be

rejected.

5. Learned counsel appearing for the Petitioner submits that though the Petitioner is convicted for the offence punishable under the provisions of 395 of the Indian Penal Code and under the provisions of MCOC Act, and sentenced to suffer ten years rigorous imprisonment, but till today the Petitioner has undergone most of the sentence, i.e. the Petitioner has undergone the imprisonment of nine years and six months and therefore his application for furlough should not have been rejected on the said ground. Learned counsel further submits that in the police report it is mentioned that if the Petitioner is released on furlough, there is possibility that some untoward incident would take place and further it is mentioned that after completion of furlough the Petitioner may not surrender before jail authorities. It is submitted that till today the

Petitioner has never been released on furlough or parole and therefore the apprehension expressed by the police report is baseless. It is submitted that sister of the Petitioner has agreed to stand as surety and submitted Hamipatra on the stamp paper of Rs.100/- and has taken the responsibility to produce the Petitioner before the jail authorities within time in case the Petitioner is released on furlough. It is submitted that if the Petitioner would be released on furlough, he would not reside at his native place and would reside at village Pangari, Taluka-Barshi, District-Solapur, where his sister resides. Learned counsel therefore prayed that the Petition deserves to be allowed.

6. On the other hand, learned A.P.P. appearing for the State, relying upon the affidavit in reply filed on behalf of Respondent Nos.2 and 3, submits that the Special Judge, MCOC

Act, Aurangabad, by an order dated 31st July, 2014 has convicted the Petitioner for the offence punishable under Section 395 read with 120-B of the Indian Penal Code and sentenced to suffer rigorous imprisonment for the period of ten years. The Special Judge also convicted the Petitioner for the offence punishable under Section 3(1)(ii), 3(2) and 3(4) of the MCOC Act and sentenced him to suffer rigorous imprisonment for ten years. All the sentences are directed to be run concurrently. It is further submitted that in another Sessions Case, the Sessions Court, Barshi has also convicted the Petitioner for the offence punishable under Section 325 read with 34 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for the period of seven years.

7. Learned A.P.P. further submits that the Petitioner has been lodged at Harsul Prison, Aurangabad and has completed actual imprisonment

of nine years and six months and 29 days, as on 31st December, 2018. Learned A.P.P. referring to the provisions of amended Rule 4 (2) of the Rules of 1959, submits that as per the said Rule, the prisoners convicted of the offences under Sections 392 to 402 of the Indian Penal Code shall not be entitled to be released on furlough. Learned A.P.P. further submits that the Petitioner has not deposited fine amount as directed by the Special Court, Aurangabad and therefore the petitioner is not entitled for grant of furlough. It is further submitted that the Judgment and order passed by the Sessions Court at Barsi was later in point of time and the Sessions Court has not directed that the sentences should run concurrently. Learned A.P.P., therefore, submits that the Petitioner is not entitled for grant of furlough leave in view of the express bar provided under amended Rule 4 (2) of the Rules, 1959. Hence it is prayed that the Petition is liable to be rejected.

8. We have given careful consideration to the submissions of the learned counsel appearing for the Petitioner and learned A.P.P. appearing for the State. We have carefully perused the pleadings, grounds taken in the Petition, annexures thereto, reply filed on behalf of Respondent nos.2 and 3, also annexures thereto and the relevant provisions of the Rules of 1959.

9. While rejecting the application of the petitioner to release him on furlough, the Respondent authorities have placed reliance upon the provisions of amended Rule 4(2), 4(4) and 4(6) of the Rules, 1959, which read as under:

"4. Eligibility of furlough

All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough.

(2) Prisoners convicted of offences under

Sections 392 to 402 (both inclusive) of the Indian Penal Code (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section),

(4) Prisoners whose release is not recommended in Police Commissionerate area by the Assistant Commissioner of Police and elsewhere, by the Deputy Superintendent of Police on the grounds of public peace and tranquility;

(6) Prisoners whose work and conduct are, in the opinion of the Superintendent of the Prison, not satisfactory enough."

10. Admittedly, the Petitioner has been convicted for the offence punishable under Section 395 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years. The petitioner has almost completed the said sentence, as the documents placed on record reveals that the Petitioner has completed actual imprisonment of nine years six months and twenty nine days as on 31st December, 2018. Therefore, the bar

provided under Rule 4 (2) of the Rules of 1959, would not be applicable in the case of the Petitioner.

11. It is the contention of the Respondents that, it is mentioned in the police report that if the Petitioner would be released on furlough, he may not surrender to the jail authority after completion of the period of furlough. The said apprehension of the Respondents is baseless, as till today the petitioner has never been released either on parole or furlough. It is pertinent to note that sister of the petitioner has agreed to stand as surety and submitted *Hamipatra* on the stamp paper of Rs.100/-, and has taken responsibility to produce the Petitioner before the jail authorities within time, in case he would be released on furlough.

12. So far as the apprehension expressed in

the police report that if the petitioner is released on furlough, there is possibility that some untoward incident may happen, the same can be taken care of by directing the Petitioner to reside at the place of her sister. Further, it is significant to note that though police report is adverse, no specific statements of the witnesses are recorded by the police, stating therein that if the Petitioner would be released on furlough, he would not surrender back to the jail authority.

13. Admittedly, as observed earlier, the Petitioner has never been released either on parole or furlough, and therefore his prayer to release him on furlough deserves to be considered. The Supreme Court in the case of Asfaq vs. State of Rajasthan and others¹, in Para-12 of the Judgment, held thus:

12. A convict, literally speaking, must

¹ [2017] 15 SCC 55

remain in jail for the period of sentence or for rest of his life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for at least some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment."

14. In the light of discussion made in forgoing paragraphs, we proceed to pass the following order:

O R D E R

(I) The impugned order dated 10th July, 2018, passed by the Deputy Inspector

General of Prisons, Central Region, Aurangabad, is quashed and set aside.

(II) We direct the Respondent Authorities to re-examine the case of the Petitioner and release the Petitioner on furlough, after completion of usual procedural formalities. The Respondent Authorities shall put a condition in the order that, during the period of furlough the Petitioner would reside at village Pangari, Taluka-Barshi, District-Solapur, where his sister resides, and would not leave the said place.

(III) The Respondent Authorities shall complete the entire exercise as expeditiously as possible, however, in any case within three weeks from the date of receipt of copy of this order.

(IV) Rule is made absolute in above terms. The Writ Petition stands disposed of accordingly.

[R.G. AVACHAT, J.]

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[S.S. SHINDE, J.]