

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

CRIMINAL WRIT PETITION NO. 331 OF 2019

Satish @ Yogesh Nimba Patil,
Convict No. C/10816
Age: Adult,
Nashik Road Central Prison, Nashik.
Versus

... **Petitioner**

1. The State of Maharashtra
Through Ministry of Home Department,
Mantralaya, Mumbai.
2. The Addl D.G.P. & I.G.
Prison, Pune,
3. Deputy Inspector General of Police,
Prison, Aurangabad.
4. The Jail Superintendent,
Nashik road Central Prison,
Nashik road, Nashik.

... **Respondents**

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Ms. Anagha Pedgaonkar., Advocate for the Petitioner (Appointed).
Mr. S.B. Joshi, A.P.P. for respondent-State.

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**CORAM : T.V. NALAWADE &
MANGESH S. PATIL, JJ.**
DATE : 18.04.2019

ORAL JUDGMENT :

Rule. Rule made returnable forthwith. Heard both the sides by consent for final disposal.

2. The present proceeding is filed for relief of quashing and setting

aside the order made by respondent no.2 on 17.09.2018 by which the furlough leave is refused to the petitioner. Relief of direction is also claimed for directing the respondents to release the petitioner on furlough leave of 14 days.

3. This Court has gone through the reply affidavit filed by the respondent no.4 and also the previous order made by this Court in Writ Petition No. 1682 of 2018 which was filed by the present petitioner. The reasons given by the respondent for refusal of furlough leave is that some witnesses have raised objection to the release of the present petitioner on furlough leave. This is the only reason given for the refusal to grant furlough leave and the base is Rule 4(4) of the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018.

4. The submissions made and the record show that the distance between the place where the petitioner will be staying Mukati and Shirsale Bk where the witnesses are staying is around 35 kms. It will be his first release on furlough leave and he has completed five years already behind the bars in this case. Though the report as per Rule 4(4) of aforesaid rule is relevant, every time the authority is not expected to give excuse that the witnesses have apprehension. When the case is decided and the person like present petitioner is convicted on the basis of evidence given by those witnesses, that objection

cannot be given that much importance. One chance needs to be given in such cases and the authority has discretion to put appropriate conditions. Surety is there and the Police Patil has also given no objection.

5. In view of these circumstances, this Court holds that the authority has committed an error in refusing to grant furlough leave in favour of the petitioner. The other circumstance that one accused in the said case is still absconding cannot come in the way of present petitioner for getting furlough leave. On the contrary that circumstance can be used against the respondent and it can be said that the apprehension expressed is not well-founded.

6. In the result, petition is allowed. The order made by the respondent no.2 of refusal of furlough leave is hereby set-aside. Direction is hereby given to the respondents to grant furlough leave. It is open to the authority to put appropriate conditions as per the rules. The rule is made absolute in above terms.

7. The fees of the appointed counsel is quantified @ Rs.3000/- and it is to be paid through the High Court Legal Services Authority.

[MANGESH S. PATIL, J.]

[T.V. NALAWADE, J.]