

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.216 OF 2019

Nagesh Gaonkar
Prisoner No.173/15,
Presently serving sentence at
Modern Central Colvale Jail,
Colvale, Goa.

....Petitioner

V/s.

1. The Inspector General of Prisons,
Government of Goa,
Office of Inspector General of Prisons,
18th June Road,
Old Education Building,
Panaji-Goa.

2. Public Prosecutor,
High Court Building,
AG's Office, High Court,
Panaji-Goa.

... Respondents

Shri T. George John, Advocate for the Petitioner.

Shri Gaurish Nagvekar, Additional Public Prosecutor for the
Respondents.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Reserved on : 22nd October, 2019

Pronounced on : 18th November, 2019

JUDGMENT :

Heard. Rule. Respondents waive service. By consent,
returnable forthwith and taken up for hearing and final disposal.

2. The petitioner challenges an order of rejection of his
application for his release on furlough passed by the Inspector General

of Prisons, Panaji-Goa on 01/10/2019.

3. At the outset, Shri T. George John, the learned Counsel submits that sans any adverse report as well as from the nominal role of the petitioner, there was no reason for the respondent no.1 to reject the prayer of the petitioner for his release on furlough. He submits that no specific reason has been assigned for the rejection of his prayer, more particularly, in the light of the fact that earlier, the police had no objection when the petitioner was released on parole or furlough on many occasions.

4. Per contra, Shri Nagvekar, opposes the release of the petitioner on furlough by contending that it is not the right of the petitioner in view of 312 of the Goa Prisons Rules. He submits that there is no substance in the petition, which deserves to be dismissed. According to Shri Nagvekar during an inquiry by the Superintendent of Police, it revealed that the victim's father had a fear that in case of release of the petitioner on furlough he might interfere with the family members thereby disturbing their lives. In support, Shri Nagvekar had annexed photostat copy of the statement of the victim's father recorded by the

police.

5. The impugned order indicates that the respondent no.1 having gone through the police report vis-a-vis Rule 313(3) of the Goa Prisons Rules, 2006 satisfied that the request of the petitioner cannot be granted in view of the adverse police report as well as specific material of evidence on record.

6. The nominal role of the petitioner indicates that ever since his conviction on 30/04/2015, he had been released on furlough or parole on as many as eight occasions. The nominal role further reveals that conduct of the petitioner was satisfactory in the jail. He had surrendered after availing 28 days of furlough lastly on 20/02/2019. That being so, I do not see any reason to construe that in case of his release on furlough he would cause any nuisance or disturb the life of the victim and her family members. What can be seen from the statement of the victim's father is that he has an apprehension of his family members being disturbed by the petitioner, if the petitioner is released on furlough. Since furlough is not a right, but a concession, it can be cancelled, in case the petitioner, in any manner, disturbs or

attempts to disturb the family life of the victim.

7. A care can be taken by informing the concerned police station to ensure that there would be no interference or disturbance in the life of the victim's family, so long as the petitioner would be on furlough.

8. Be that as it may. In case of *Asfaq V/s. State of Rajasthan* reported in *(2017) 15 SCC 55*, the Hon'ble Apex Court has held that the furlough is a brief release from the prison. It is conditional and it is given in case of long term imprisonment. A convict, literally speaking, must 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. (emphasis supplied)

9. In light of the aforesaid dicta of the Hon'ble Supreme Court, I do

not feel that there should be any reason to refuse furlough. The report received by the respondent no.1 from the concerned police station appears to be furnished in a stereotyped manner without there being any independent observations by the superintendent of police, South Goa. The said report dated 27/08/2019 is general in nature.

10. In view of what has been observed herein above, I am inclined to grant the prayer of the petitioner. Accordingly, the impugned order passed by the respondent no.1 dated 01/10/2019 is set aside. The respondent no.1 shall consider the petitioner's application for furlough on its own merits and in accordance with law.

11. The respondent no.1 shall dispose of the furlough application as expeditiously as possible and in any case within a period of four weeks from today. The respondent no.1 shall communicate the decision to the petitioner forthwith.

12. Rule is made absolute in the aforesaid terms. There shall be no order as to costs. All concerned to act on the basis of authenticated copy of this order.

NH

PRITHVIRAJ K. CHAVAN, J.