

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 4553 OF 2018**

Gajanan Hari Patil,
Age-41 years, Occupation- Farmer,
Residing at Municipal Post Narsinghpur (Kode),
Taluka Walva, Dist. Sangli and
at presently lodged in Kolhapur
Central Prison, Kalamba, Kolhapur.
Vide Prisoner No. C-4043.

.....Petitioner

Vs.

1 The State of Maharashtra,
Through the Office of
Public Prosecutor, High Court,
Bombay.

2 The Inspector General of Prison,
Western Zone, Maharashtra.

3 The Dy. Inspector General of Prison,
Western Zone, Pune-411 006,
Maharashtra.

4 The Jail Superintendent,
Kolhapur Central Prison,
Kalamba, Kolhapur-416 007.

....Respondents.

Ms. Harjeet Kaur Bhagwant Singh for the Petitioner.
Ms. P.P. Shinde, APP for the Respondent-State.

CORAM : A. S. OKA, AND

A. S. GADKARI, JJ.

DATE : 24th JANUARY, 2019.

ORAL JUDGMENT (PER- A.S. OKA, J.)-

Heard the learned counsel appearing for the Petitioner and the learned APP.

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

3 An Application was made by the Petitioner for grant of furlough under the provisions of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, "*The said Rules*"). There is no dispute that the said Application was governed by the said Rules as amended on 26th August, 2016 and as the Application was made prior to 16th April, 2018, the amendment made to the said Rules with effect from 16th April, 2018 is not applicable to the case of the Petitioner.

4 The Competent Authority rejected the prayer for grant of furlough on various grounds. The first ground is that when the Petitioner was released on parole in the year 2009, there was a delay of 8 days in reporting back to Jail. The second ground is that in the year 2010, when furlough was granted, the Petitioner reported back late by one day. Another ground is that when parole was granted to the Petitioner in 2012, he was brought back to Jail by the Police after

expiry of period of 113 days from the date on which the period of parole expired. The last ground is adverse police report. One more observation made in the said Order is that surety offered by the Petitioner was very old. The Appellate Authority confirmed the said Order.

5 We have considered the submissions made across the bar. Though there was delay of 8 days in reporting to Jail in the year 2009 after expiry of the parole, in the year 2010, the Petitioner was granted furlough. The Petitioner reported a day after the date on which the furlough expired. In 2012, when parole was granted, there was delay of 113 days in returning to the Jail. However, from the report of the Jail Superintendent of Kolhapur Central Prison, which is also signed by three other officers of the prison, it appears that on account of said delay of 113 days, remission for a period of 3 years was cut. Moreover, on 13th August, 2016, the Petitioner was granted parole up to 22nd August 2016 and he reported back to the Jail on 23rd August, 2016. Therefore, now furlough cannot be denied to the Petitioner on the ground of earlier defaults. The same report records that the conduct of the Petitioner in Jail is satisfactory.

6 Even treating the finding of the authorities about the

contents of the Police report as correct, it is not a case where adverse police report is given on the ground of public peace and tranquility. Hence, the impugned Orders are erroneous and the Petitioner was entitled to grant of furlough. However, as the surety offered by the Petitioner has been disapproved on the ground of old age, the Petitioner will have to furnish another surety. Accordingly, we pass the following Order:-

- a) The impugned Orders at Exhibits “A” and “B” are hereby set aside;
- b) The Competent Authority under the said Rules shall pass a fresh Order in accordance with law, granting furlough to the Petitioner, subject to the Petitioner of furnishing another surety to the satisfaction of the concerned Authority;
- c) Rule made absolute in the above terms.
- d) All the concerned to act on the basis of an authenticated copy of this Order.

(A.S. GADKARI, J.)

(A.S. OKA, J.)