

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 5718 OF 2018**

Jalindersingh S/o. Ajitsingh Kalyani,
Aged 42 years, residing at
Survey No. 110, Ramtekadi,
Near Sai Baba Mandir, Hadapsar,
Pune-411 013.
and at presently lodged at
Kolhapur Central Prison,
Kalamba as a Prisoner No. C-3104.

.....Petitioner

Vs.

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

2 The Inspector General of Prison,
Western Zone, Pune – 411 006.

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

4 The Jail Superintendent,
Kolhapur Central Prison,
Kalamba, Kolhapur.

5 The Senior Inspector,
Wanwadi Police Station,
Pune-411 006.

.....Respondents.

Ms. Harjeet Kaur 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.):

Rule. The learned APP waives notice for the Respondent-State. Forthwith taken up for final disposal.

2 The challenge in this Petition under Article 226 of the Constitution of India is the Order of rejection of Application for grant of furlough under the provisions of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, "*The said Rules*"). There is also a challenge to the Order of Appellate Authority which confirmed the Order of the Competent Authority.

3 The furlough has been denied on the basis of the disqualification contained in Clauses (2) and (13) of Rule 4 of the said Rules, as amended on 16th April, 2018. From the impugned Order of the Competent Authority, it appears that in two cases, the Appellant was convicted for the offence punishable under Section 392 of the Indian Penal Code and in one case he was convicted for the offence punishable under Section 395 of the Indian Penal Code. However, there is no dispute that the Petitioner has undergone sentence imposed for these offences. Hence, Clause (2) of the Rule 4 will not apply in the present case.

4 The disqualification in Clause (13) of Rule 4 applies when person applying for furlough is sentenced for the offences like terrorists crime, mutiny against State, Kidnapping for ransom. Therefore, looking at the chart, which is a part of the impugned Order of the Appellate Authority, even Clause (13) of Rule 4 has no application.

5 We may also note that, in the Order of the Competent Authority as well as the Appellate Authority, there is a reference to disqualification even under Clause (10) of Rule 4 on the ground that, the Petitioner defaulted in surrendering after expiry of the period of parole or furlough. This finding is based on the fact that when in the year 2006, the Petitioner was released on furlough, there was a delay of 144 days in surrendering.

6 The chart tendered across the bar signed by the Superintendent of Kolhapur Central Prison, shows that in the year 2015, parole as well as furlough was granted to the Petitioner. Therefore, the ground of default in the year 2006, will not be available. Accordingly, we pass the following order:-

- a) The impugned Orders are set aside, as none of the grounds of disqualification under Rule 4 of the said

Rule are available;

- b) The Competent Authority shall pass a fresh Order granting furlough to the Petitioner on appropriate conditions;
- c) Such Order shall be passed within a period of three weeks from the date on which this Judgment and Order is uploaded;
- d) Rule is made absolute in the above terms.

(A.S. GADKARI, J.)

(A.S. OKA, J.)