

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 17 OF 2018

Rohan Dattatraya Deshmukh. ... Petitioner.
V/s.
The State of Maharashtra through Additional
Director General of Police and others. ... Respondents.

Through Jail.
Mr.Arfan Sait, APP for the respondent- State.

CORAM : A.S.OKA AND A.S.GADKARI, JJ.

DATE : 18th January 2019

P.C.:

Rule. The learned APP waives service for the respondent-State. Forthwith taken up for final disposal.

2. The petitioner applied for grant of furlough under the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short “the said Rules”). The prayer was rejected by the Competent Authority on two grounds. One was on the ground incorporated in sub-rule (4) of Rule 4 and the other is on the ground of sub-rule (11) of Rule 4 of the said Rules. The appeal preferred by the petitioner against the said order has been dismissed by the Appellate Authority.

3. The said Rules underwent amendment by a notification dated 16th April 2018. Under the unamended Rules, under clause (4) of Rule 4, it was provided that furlough will be denied if the release of the applicant is not recommended by the police officers named therein on the ground of public peace and tranquility. In the present case, the police report is submitted by the Assistant Police Inspector of Kinhawali Police Station. It is stated that if the petitioner is released on furlough, there is a possibility of law and order situation being created and a possibility of the petitioner assaulting the witnesses and the complainant. However, the grounds of public peace and tranquility have not been mentioned in the report. Therefore, the prayer could not have been rejected on the ground of clause (4) of Rule 4.

4. Now the embargo imposed by clause (11) of Rule 4 of the said Rules does not exist after the amendment dated 16th April 2018. Therefore, the case of the petitioner for grant of furlough will have to be reconsidered.

5. Accordingly, we pass the following order:

- (i) The impugned orders dated 17th April 2017 and 26th September 2017 are hereby quashed and set aside;
- (ii) We direct the Competent Authority to decide the application made by the petitioner for grant of furlough afresh in the light of observations made in this judgment and order and in accordance with the said Rules as amended on 16th April 2018;

- (iii) Appropriate order shall be passed by the Competent Authority within a period of two weeks from the date on which a copy of this order is received by the Competent Authority;
- (iv) We direct the office of the Public Prosecutor to communicate this order to the Competent Authority;
- (v) Rule is made absolute on the above terms. Petition is disposed of.

(A.S.GADKARI, J.)

(A.S.OKA, J.)