

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 18 OF 2018

Pandharinath Dattatraya Pawar. ... Petitioner.
V/s.
The State of Maharashtra and others. ... Respondents.

Through Jail.

Ms.M.H. Mhatre, 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 application made by the petitioner for grant of furlough under the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short “the said Rules”) has been rejected by the Competent Authority. The said order has been confirmed in appeal. The rejection is on the basis of disqualifications under sub-rules (4) and (6) of Rule 4 of the said Rules and Rule 4(B)(11) of the notification dated 26th August 2016. As far as clause B-11 of Rule 4 is concerned, the same stands deleted by amendment to the said Rules with effect from 16th April 2018. As regards

sub-rule (4) of Rule 4, we find that the adverse police report does not record a conclusion that release of the petitioner is not recommended on the ground of public peace and tranquility and, hence, the said disqualification does not apply. Clause (6) of Rule 4 provides for disqualification for the persons whose conduct in the opinion of the Superintendent of Jails is not satisfactory. In the present case, the chart forwarded along with this petition is signed by three prison officers as well as the Superintendent of Kolhapur Central Jail. Against column No.19, it is specifically stated that the conduct of the petitioner during the relevant period was satisfactory. There is nothing adverse mentioned in the said report. However, the Jail Superintendent has simply stated that as one more case is pending, the case of the petitioner is not recommended. Thus, even the ground under clause (6) of Rule 4 will not apply and could not have been invoked.

3. Hence we pass the following order:

- (i) The impugned orders dated 6th March 2017 and 5th October 2017 are hereby quashed and set aside;
- (ii) We direct the Competent Authority to reconsider the application made by the petitioner for grant of furlough on the basis of the said Rules as amended from 16th April 2018;
- (iii) Appropriate order shall be passed by the Competent Authority within a period of two weeks from the date on which copy of this order is received by the Competent

Authority. We direct the office of the Public Prosecutor to communicate this order to the Competent Authority;

- (iv) We make it clear that the application for grant of furlough cannot be rejected on the grounds mentioned in the impugned orders.
- (v) Rule is made absolute on the above terms. Petition is disposed of.

(A.S.GADKARI, J.)

(A.S.OKA, J.)