

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.39 OF 2019

Jeevan Dipak Waghmare

...Petitioner

vs.

The State of Maharashtra

...Respondent

Ms. Maya P. Majumdar for the Petitioner.

Mr. Arfan Sait, APP for the Respondent.

**CORAM : B. P. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : 27/03/2019.

P.C.:

1. Learned counsel for the petitioner and learned APP. Perused the order dated 04/8/2017 rejecting the furlough leave to the petitioner and the order of Appellate Authority dated 22/1/2018 upholding it. The rejection is on the ground that while in open prison, he had assaulted senior Jailor with sickle and for that assault offence under section 353, 504 and 506 of IPC vide Crime No.9/2017 is registered against him. The order also mentions that his release is not recommended by the prison administrator. The impugned order also mentions that surety given by the petitioner may not be in position to control him and injury to life of relatives of victim is also apprehended.

2. This Court has on 16/3/2019 called for investigation papers in relation to crime No.9/2017 wherein report dated 25/1/2017 lodged with police shows that the petitioner on that day threatened senior jailor and also stated that a case under atrocities would be filed. It is claimed that uttering these words the petitioner came towards the senior jailor. The next line however shows that at that time sickle used for agriculture purpose was in his hand. It appears that he was working with that sickle when he was asked to complete the work and that sickle therefore was not with him

as a weapon and the report nowhere shows that he attempted or intended to use that sickle as a weapon on the basis of which offence under section 353 of IPC came to be registered.

3. Learned counsel for the petitioner submits that police authorities have never opposed his release and have pointed out that when he was earlier released on furlough he has behaved properly.

4. We therefore find nothing adverse in police report and the material placed by the Prison Authority. There is nothing on record to show that the petitioner had in past attempted to threaten relatives of victim in any manner. There is also nothing to demonstrate that he planned to use sickle to attack senior prison officer. Police report appears to be in his favour.

5. Learned counsel has submitted that the record of petitioner in prison is good and he is engaging classes and teaching other prisoners. After the alleged incident, he has been shifted back to normal jail at Kolhapur but responsible work as watchman is given to him. These facts also therefore needs proper evaluation.

6. We therefore find impugned orders unsustainable. Accordingly, the same are quashed and set aside. We direct the concerned authority to look into all papers including his conduct till date and to decide on his request for furlough afresh within a period of 4 weeks from the date of communication of this order. Writ petition is partly allowed and disposed of.

7. The papers of Crime No.9/2017 produced by learned APP are taken on record.

(PRAKASH D. NAIK, J.)

(B. P. DHARMADHIKARI, J.)