

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 767 OF 2019

Mahadu Krishna Vir. ... Petitioner.
V/s.
The Inspector General of Prisons and another. ... Respondents.

None for the petitioner.
Ms.P.P.Shinde, APP for the respondent-

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

DATE : 28th February 2019.

P.C. :

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

2. The petitioner applied for grant of parole under Rule 3 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short “the said Rules of 1959”). The Competent Authority rejected the said application on the grounds under sub-rule (4) and sub-rule (6) of Rule 4 of the said Rules of 1959. The Appellate Authority, in appeal preferred by the petitioner, confirmed the order of the Competent Authority only on the ground mentioned in sub-rule (4) of Rule 4. Sub-rule (4) of Rule 4 of the said Rules of 1959 lays down that a prisoner is disentitled to be released on furlough if the Deputy Superintendent of Police has not recommended his release on the ground of public peace and tranquility. We have

perused two police reports. In the report dated 23rd July 2018 submitted by the Sub-Divisional Police Officer, Jawhar Division, he has stated that statements of witnesses who deposed against the petitioner have been recorded in which they have stated that they apprehend danger from the petitioner. The police report submitted by the Sub-Divisional Police Officer is based on the report dated 12th July 2018 submitted by the Inspector of Police attached to Mokhada Police Station. The said report records that statements of three witnesses were recorded who stated that they did not apprehend any danger from the petitioner. The Inspector of Police has recorded that the complainant has stated in her statement that she apprehends danger to herself and her family members.

3. It is pertinent to note that the petitioner is a resident of Village- Virwadi, Post- Khodala, Taluka- Mokhada, District- Palghar and the complainant is a resident of Village- Palaspada, Taluka- Mokhada, District- Palghar. The three witnesses whose statements are recorded are residents of the same village. Thus, the report dated 23rd July 2018 submitted by the Sub Divisional Police Officer is based on misreading of the report submitted by the Police Inspector of Mokhada Police Station.

4. Hence, based on the report of the Sub Divisional Police Officer, furlough could not have been denied to the petitioner. Perusal of Rule 10 shows that a condition can be imposed while releasing the prisoner on furlough that he will remain confined to the place where his family is residing. In the present case, the village of residence of the petitioner and the village of residence of the complainant are not the

same. Therefore, the competent authority can always impose appropriate condition as contemplated by Rule 10 of the said Rules of 1959. Accordingly, we pass the following order:

O R D E R

- (i) The impugned orders dated 27th September 2018 and 28th February 2018 are hereby quashed and set aside;
- (ii) We direct the competent authority which is empowered to grant furlough under the said Rules of 1959 to pass a fresh order granting furlough to the petitioner subject to appropriate terms and conditions. Such order shall be passed by the competent authority within a period of two weeks from the date a copy of this order is provided to his office by the office of the Public Prosecutor;
- (iii) Rule is made absolute on the above terms;
- (iv) A copy of this order shall be forwarded to the petitioner through the Jail Superintendent of the concerned jail.

(A.S.GADKARI, J.)

(A.S.OKA, J.)