

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1388 OF 2019

Walmik Devram Lahange ... Petitioner

Versus

State of Maharashtra ... Respondent

Mr.Surel Shah, Legal Aid Advocate for the Petitioner.

Mr.J.P. Yagnik, APP for the respondent State.

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

DATE : APRIL 23, 2019

P.C.:

The petitioner in custody since 27/2/2012 has been convicted on 7/5/2013 and has put in more than 7 years behind the bars. He has not been released either on parole or furlough. It appears that he sought furlough leave and for that purpose moved an application on 17th October, 2016. The application remained pending and has been dismissed on 28/2/2018 on the ground that the appeal against the judgment of conviction preferred by him is pending before this Court. The impugned order shows reference to Government Notification dated 26/8/2016 for this purpose. The

appeal preferred by him to State Government came to be rejected on 20/6/2018.

2. The reasons given in the impugned order cannot be accepted as a valid reason. If the appeal is allowed by this Court, he may stand exonerated. If it is dismissed, he would be presumed to be in Jail from 27/2/2012 and hence, the benefit of provisions for parole and furlough would apply to him accordingly. It is not the case of the respondents that in appeal, application for bail was moved and it has been rejected by this court. No other reasons which disentitle him to furlough are pointed out.

3. Learned counsel (appointed) for the petitioner has fairly invited our attention to the order dated 7/6/2016 in W.P.No. 4526 of 2013 and other similar orders. He pointed out that as per Note (3) of Rule 2 in Chapter XXXVII of the Maharashtra Prison Manual, 1979, furlough application which is not decided in relevant year lapses. We need not go into that facet at all. Here, the application made on 17/10/2016 has not been entertained and if the logic used for the same is upheld, the petitioner will not be in a position to apply for the furlough till his appeal is decided by this Court. Here, we find the reasons given for rejecting his furlough application unsustainable.

4. Accordingly, we direct the respondents to consider the entitlement of the petitioner to furlough in accordance with the rules in future ignoring the fact of pendency of his criminal application under section 374 of Cr.P.C. before this Court. If any such prayer is already made by him and it is pending, the decision upon it shall be taken at the earliest and in any case within a period of two months from the date of communication of this order.
5. This order shall also be communicated to the petitioner in prison.

(PRAKASH D. NAIK, J.)

(B.P. DHARMADHIKARI, J.)