

3.9.2019

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 2562 OF 2019

Leharilal Girdharilal Gujar ...Petitioner

V/s.

The State of Maharashtra & anr.Respondents

Mr. O.K. Shaikh, Advocate for the petitioner.

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

Mr. P.S. Shinde, Jailor-II, Kolhapur Central
Prison.

**CORAM : B.P. DHARMADHIKARI, &
SANDEEP K. SHINDE, JJ.**

Tuesday, 3rd September, 2019.

P.C. :

1. Heard Learned Counsel (appointed) and
learned APP who relied on reply to urge that on the
ground of adverse opinion of Superintendent of jail

3.9.2019

and his conviction in a grave matter involving murder and dacoity, the Sanctioning Authority rejected furlough, apprehending that if released, he may not return back.

2. Learned Counsel appearing for prisoner submits that, prisoner was convicted on 30th April, 2005. Before that, he was undertrial prisoner from 15th August, 2001 till 29th April, 2005. Thus, he has completed almost eighteen years in prison. He has never been released either on parole or furlough. He further states that, report submitted by Rajasthan Police is favourable. Learned APP submits that considering heinous nature of crime, applicant has been categorised and put in twenty-six years category. Thus, he has few more years for release. He hails from Rajasthan and in this

3.9.2019

situation, if he is released, he may not return back at all. He points out that such leave is not the right of prisoner.

3. We have perused the order dated 8th January, 2019 passed by Sanctioning Authority and order dated 11th March, 2019 passed by Appellate Authority. The report from Rajasthan Police is not adverse. Only because of apprehension that, prisoner may not return back, Superintendent has recorded an adverse opinion. The same apprehension has also weighed with both the Authorities.

4. During hearing, we find that surety offered is also from Rajasthan.

5. The Jail Authorities or respondents do not point out any adverse conduct by prisoner while in

3.9.2019

jail. The nominal role forming part of record shows that, as on 30th April, 2019, he has put in seventeen years, eight months and seventeen days.

6. In this situation, when this period of actual imprisonment is looked into, it is apparent that, with remission he may have put in more period. We therefore do not find that the person who has spent such a huge period in jail would abscond.

7. Moreover, it is within powers of Sanctioning Authority to obtain appropriate bonds, sureties and undertakings including local sureties for procuring presence of applicant back in jail on due date.

8. We find reasons on record insufficient to deny furlough.

3.9.2019

9. We therefore direct Authorities to pass fresh orders incorporating necessary terms and conditions within next six weeks after communication of this order to them.

10. The petition is accordingly partly allowed and disposed of.

11. Order be communicated to prisoner in jail.

(SANDEEP K. SHINDE, J.)

(B.P. DHARMADHIKARI, J.)