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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4574 OF 2018

Sumit Prakash Gavli ...Petitioner
vs.
The State of Maharashtra & Ors. ...Respondents

Ms Harjeet Kaur for the Petitioner
Ms P.P.Shinde, APP for the respondent-State

CORAM : A.S.OKA, &
A.S.GADKARI, JJ.
DATE : JANUARY 31, 2019

P.C.:

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

2 It appears that the petitioner had applied for grant of furlough under the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short 'the said Rules'). By order dated 1st June 2017 the Superintendent of Kolhapur Central Prison rejected the application made by the petitioner. Being aggrieved by the said order, the petitioner preferred an appeal. The Appellate Authority by order dated 3rd November 2017 (Exhibit A to the petition) rejected the appeal preferred by the petitioner.

3 There are two grounds on which the application
for grant of furlough was rejected. The first is

that when the petitioner was released on parole on 14th July 2016 for a period of 30 days, there was a delay of 30 days on his part in reporting back to the jail. The second ground is that there is an adverse police report submitted by the Appellate Authority expressing an apprehension that if he is released on parole, there will be a breach of peace. The third ground is based on Sub-Rule 11 of Rule 4B of the said Rules.

4 We may note here that Sub-Rule 11 of Rule 4B has since been deleted by amendment dated 16th April 2018. We have perused the police report. It is a stereotypical police report. It is mentioned only on the basis of the statements recorded of the complainant and the widow of the victim that there is a likelihood of breach of peace.

5 As mentioned in the impugned order of the Appellate Authority, the petitioner was enlarged on parole on 14th July 2016 and was out of prison till 13th October 2016. It is not the case of the respondents that any untoward incidents were reported involving the petitioner during that period. Moreover, by the order dated 30th October 2017 the Divisional Commissioner granted parole to the petitioner. In the copy of the said order which is at Exh. B to the petitioner, it is mentioned that whenever the petitioner was released earlier on furlough or parole, he has reported back to the jail on his own. After rejection of the present

application, by order dated 1st June 2017, parole was granted to him for 30 days.

6 Therefore, none of the grounds which are set out in the order of the Appellate Authority were available to reject the prayer made by the petitioner.

7 Accordingly, the petition must succeed and we pass the following order:

- (I) The impugned orders dated 1st June 2017 and 3rd November 2017 are hereby set aside;
- (II) We direct the Superintendent of Kolhapur Central Prison to pass a fresh order granting furlough to the petitioner subject to appropriate terms and conditions;
- (III) We make it clear that furlough which may be granted to the petitioner will have to be treated as the furlough during the year 2017;
- (IV) Rule is made absolute on above terms.

(A.S.GADKARI,J.)

(A.S.OKA,J.)