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

CRIMINAL WRIT PETITION NO.5274 OF 2017

Kailas Madhukar Pithe

..Petitioner

Vs

The State of Maharashtra

..Respondent

Ms. Farhana Shah for Petitioner.

Mr. Ajay Patil, APP for Respondent-State.

**CORAM : A.S. OKA &
A.S.GADKARI, J.J.**

DATE : 22nd January 2019.

P.C.:

1] This petition received through the jail takes an exception to the order of the Competent Authority rejecting application made by the petitioner for grant of furlough under the The Prisons (Bombay Furlough And Parole) Rules, 1959 (for short the said Rules) and confirmation of the said order by the Appellate Authority.

2] Perusal of the impugned orders would show that, the Competent Authority rejected the application on the ground specified in sub rule (4) of rule 4 of the said Rules.

In appeal while confirming the order of the Competent

Authority, apart from sub-rule (4) of rule (4) of the said Rules, the Appellate Authority also invoked sub-rule (6) of rule 4 of the said Rules.

3] We have perused the so-called adverse police report dated 7th February 2017. No reasons are recorded for recommending that furlough should not be granted to the petitioner. Under sub-rule (4) of rule 4 of the said Rules, the prisoner is disentitled to furlough on the ground that the police officers mentioned therein have not recommended release on the ground of public peace and tranquility. That is not the ground stated in the police report.

4] As regards the applicability of sub-rule (6) of rule 4 of the said Rules, it is not mentioned in both the impugned orders that the Superintendent of the concerned prison is of the opinion that the conduct of the petitioner is not satisfactory enough. In the report dated 3rd December 2017 signed by the Superintendent of Nashik Central Prison which is forwarded to this Court, nothing adverse is mentioned against the petitioner. The report shows that, while in jail, the petitioner has not been penalised.

5] Thus, sub-rule (6) of rule 4 of the said Rules is not applicable. Hence, there was no justification for rejecting the prayer for grant of

furlough. Accordingly, we pass the following Order:

(a) The impugned Orders passed by the Competent Authority and the Appellate Authority denying furlough to the petitioner are hereby set aside;

(b) We direct the Competent Authority to decide the application for grant of furlough to the petitioner afresh in the light of what has held in this Order and a fresh Order shall be passed without within a period of two weeks from the date on which the Order is communicated to the said Authority. The Office of the Public Prosecutor is directed to communicate the said Order to the Competent Authority;

(c) We make it clear that, if the petitioner is released on furlough on the basis of this Order, grant of furlough leave shall be treated as the leave during the year 2016;

d] Rule is made absolute in above terms.

(A.S.GADKARI, J.)

(A.S.OKA, J.)