

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 5688 OF 2018**

Sachin Bhimrao Jumanalkar

.....Petitioner

Vs.

The State of Maharashtra & Ors.

....Respondents.

None for the Petitioner.

Mr. Ajay Patil, APP for the Respondent-State.

CORAM : A. S. OKA, AND**A. S. GADKARI, JJ.****DATE : 4th JANUARY, 2019.****P.C.:-**

This Writ Petition is received through Jail.

2 An Application for grant of furlough was made by the Petitioner under provisions of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, "*The said Rules of 1959*"). The said Application was rejected by the Competent Authority. Against the rejection of the said Application, an Appeal was preferred by the Petitioner before the State Government. The said Appeal has been dismissed.

3 The Petitioner, who is at present undergoing sentence for the offence punishable under Section 302 of the Indian Penal Code in Kolhapur Central Jail, has sent this Petition through Jail.

4 Going by the impugned Order of the Appellate Authority, the Application has been rejected on the grounds specified in sub-clauses (4), (6), (10) and (16) of Rule 4 of the said Rules of 1959.

5 We have carefully perused both the Orders. The first ground is that the prisoner's release is not recommended by the District Magistrate. We have perused the report of the District Magistrate. On plain reading of the report, it cannot be said that the Petitioner is dis-entitled to grant of furlough on the ground of public peace and tranquility. Hence, the ground under Sub-clause (4) of Rule 4 is not applicable.

6 The second ground invoked for rejection of the Application is Sub-clause (6) of Rule 4. We have perused the reasons recorded by the Competent Authority. We find that the Competent Authority has merely stated that the Jail Superintendent has not recommended grant of furlough. The Competent Authority has not come to the conclusion that the Jail Superintendent is of opinion that, the conduct of the Petitioner is not satisfactory enough. Hence, even the said ground is not applicable.

7 The third ground is that, when the Petitioner was earlier released on furlough in the years 2010, 2012 and 2014, he did not

surrender within the stipulated time. We have perused the chart annexed to the Petition, which is signed by the Superintendent of Kolhapur Central Prison. We find that the allegation of delay in surrender lastly pertains to the year 2014. For that default, even going by the chart, the Applicant has already been penalized by cutting his remission of 275 days. Moreover, the impugned Orders noted that a crime has been registered by the Police against the Petitioner. Therefore, in the facts of the case, the disqualification under Sub-Clause (10) of Rule 4 is not attracted.

8 The last ground is based on sub-clause (16) of Rule 4 that, the work and conduct of the Petitioner, has not been good enough during the period of two years. We have perused the Exhibit/Annexure "D", which is signed by the Jailor and other 2 Jail Officers, as well as, the Superintendent of Kolhapur Central Jail. There is no such observation made and on the contrary, it is mentioned that the conduct of the Petitioner was satisfactory.

9 Hence, we find that all the four grounds of disqualification set out in the impugned Orders were not attracted in the facts of the case and the Application for release on furlough could not have been rejected on those grounds.

10 Accordingly, the Petition must succeed and we pass the following Order.

- a) The impugned Orders dated 16th July, 2018 and 10th/11th September, 2018 are hereby quashed and set aside;
- b) We direct the Competent Authority to decide the Application made by the Application afresh, in the light of the observations made in the Judgment and Order. An appropriate Order shall be passed by the Competent Authority within a period of one week from the date on which this Order is communicated to the Competent Authority;
- c) We direct the office of the Public Prosecutor to communicate this Order to the Competent Authority by forwarding an authenticated copy of this Order;
- d) We direct the Jail Superintendent of Kolhapur Central Prison, to communicate this Order to the prisoner.

(A.S. GADKARI, J.)

(A.S. OKA, J.)