

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION (WP) NO. 203/2019

1. Mohd. Yakub Abdul Majid Nagul
Convict No. C/8774
Presently at Central Prison,
Nagpur

.... **PETITIONER**

VERSUS

1. Deputy Inspector General (Prisons) (East)
Nagpur
2. The Superintendent Central Prison,
Nagpur

.... **RESPONDENTS**

Shri Mir Nagman Ali, Advocate for petitioner
Ms. N.K. Tripathi, APP for respondent nos. 1 and 2

CORAM:- P.N. DESHMUKH AND
SMT. PUSHPA V. GANEDIWALA, JJ.

DATED :- 19/06/2019

ORAL JUDGMENT (Per Smt. Pushpa V. Ganediwala, J.) :

Rule returnable forthwith. Heard finally by consent.

2. This petition is directed against the order of rejection dated 28/11/2018 passed by the respondent No.1, thereby rejected

furlough leave to the petitioner for 28 days mainly on the ground that he being a convict for the offences of serious nature as listed in Rule 4(13) of the Prisons (Bombay Furlough and Parole) Rules, 1959.

3. We have heard Shri Mir Nagman Ali, learned Counsel for the petitioner, Ms. Tripathi, learned A.P.P. for the respondent nos. 1 and 2. Perused the record.

4. At the outset, petitioner is undergoing a sentence of life imprisonment for the offences punishable under Sections 302, 307, 326, 304, 324 read with Section 120(b) of Indian Penal Code.

5. As per Rule 4(13) of the aforesaid rules, a person who is sentenced for offences such as terrorist crimes, mutiny against State, kidnapping for ransom has been excluded from eligibility for furlough.

6. In the instant case, undisputedly the case of the petitioner does not fall in any of these crimes. He is convicted simply for the offences punishable under the provisions of Indian Penal code.

7. It is informed by the learned Counsel for the petitioner that in the case of Jafar S/o Abdul Haq Shaikh vs The State of Maharashtra & others in Criminal Writ Petition (WP) No. 1293/2017, decided on 24/11/2017, a co-accused with the present petitioner/accused in the same trial was allowed furlough by the Division Bench of this Court.

8. In the instant case, on earlier occasions the petitioner came to be released on furlough and parole and he did not misuse his liberty, though for one or two occasions, he surrendered late for some short

period. As of now, the petitioner has undergone the sentence for more than 10 years. As per reply filed on behalf of the State, he was lastly released on furlough, as per order of this court on 31/05/2016 and he surrendered on due date. Looking to his conduct, in our opinion, petitioner is entitled to be released on furlough, as prayed for.

9. In the result, we allow the petition.

10. The order dated 28/11/2018 passed by Deputy Inspector General of Police (Prisons) is hereby quashed and set aside. The petitioner is held entitled to be released on furlough leave for 28 days, on such terms and conditions as the authority shall deem fit and proper.

11. Besides that while on furlough leave, the petitioner shall report the concerned police station once in a week and before leaving the place of his residence, he shall provide an intimation to the concerned police station. If the petitioner commits an act of misconduct or fails to return on due date or commits offences, the same shall affect his release on the next occasions.

12. Rule is made absolute in the aforesaid terms. No order as to costs.

JUDGE

JUDGE

D.S.Baldwa