

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

Criminal Writ Petition No.8 of 2020

* Nurul Shamshul Haq Shah (C-5201)
Age 34 years, Occupation : Convict,
R/o Mahatma Kabirnagar,
Milan Welfare Society, Room No.35,
Vile Parle, Andheri East, Mumbai
At present confined in
Open Prison, Paithan. **.. Petitioner.**

Versus

- 1) The State of Maharashtra
Through D.I.G., Prisons,
Aurangabad.
- 2) The State of Maharashtra
Through Superintendent,
Open Prison, Paithan. **.. Respondents.**

Shri. Rupesh A. Jaiswal, Advocate, for petitioner.

Smt. V.N. Patil Jadhav, Additional Public Prosecutor, for
respondent Nos.1 and 2.

**Coram: T.V. NALAWADE &
M.G. SEWLIKAR, JJ.**

Date: 22 JANUARY 2020

ORAL JUDGMENT (Per T.V. Nalawade, J.):

- 1) Rule. Rule made returnable forthwith. Heard
both sides by consent for final disposal.

2) The present proceeding is filed to challenge the order made by the respondents by which the application filed for furlough leave by the present petitioner is rejected. The submissions made show that the present petitioner is behind the bars for more than 9 years and he will come out of jail on furlough leave first time if his application is allowed. Though in the petition it is mentioned that in the past the petitioner was granted furlough leave and he had returned in time, learned counsel for the petitioner corrected himself and submitted that this is the first occasion for the petitioner to get furlough leave.

3) The reasonings given by the respondents show that adverse police report is considered against the petitioner and that is on the basis of the statements given by the witnesses. Witnesses are bound to object such relief every time. Only due to the objections of the witnesses furlough leave cannot be rejected. Considering the purpose behind furlough leave, this Court holds that subject to some conditions furlough leave needs to be granted. It appears that one more reason given is that in

September 2019 code of conduct was in force as elections to the State Legislative Assembly were declared. That also cannot be a ground for refusal of furlough leave. These reasons given for rejection of furlough application cannot sustain in law. In the result, following order :-

4) The petition is allowed. The order passed by the respondents dated 27-9-2019 rejecting the application for furlough leave is hereby quashed and set aside. The application filed for furlough leave stands allowed. The petitioner is to be released on usual conditions. If the petitioner is not able to give surety then cash security may be accepted from him. Rule made absolute in those terms.

Sd/-
(M.G. SEWLIKAR, J.)

Sd/-
(T.V. NALAWADE, J.)

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