

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

CRIMINAL WRIT PETITION NO. 688 OF 2020

Rahul s/o Limbaji Landge (C-5240),
Age 40 years, Occu. Convict,
R/o 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

Mr Rupesh A. Jaiswal, Advocate for petitioner
Mr R.D. Sanap, A.P.P. for respondents

**CORAM : RAVINDRA V. GHUGE, AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 4th August 2020

ORAL JUDGMENT (Per Shrikant D. Kulkarni, J.)

1. Rule. Rule made returnable forthwith. By consent, heard learned Advocate for the petitioner and learned A.P.P. for respondents for final disposal at admission stage.
2. The petitioner is seeking furlough leave under Rule 4 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959.
3. The petitioner, along with co-accused came to be convicted on 26.7.2011 at the hands of Additional Sessions Judge at Nanded, for the offences punishable under Section 302 and 120-B of the Indian Penal Code and sentenced to undergo imprisonment for life.
4. The petitioner had applied to respondent no.2 to release him on furlough leave. Respondent no.2 forwarded the application of the petitioner

to respondent no.1. The application for furlough leave was rejected by respondent no.1 on the ground that there is adverse Police report against the petitioner. It is the apprehension of the jail authority on the basis of Police report that if the petitioner is released on furlough leave, there is danger to the life of first informant, witnesses and relatives of the deceased.

5. The impugned order dated 24th/25th February 2020, passed by respondent no.1/ D.I.G. Prisons, Aurangabad is assailed mainly on the ground that impugned order is bad in law. The prayer to release the petitioner on furlough leave ought to have been considered favourably, even by imposing certain conditions. The reason assigned in the impugned order, for rejection of furlough leave is not sustainable in the eyes of law.

6. Heard Mr Jaiswal, learned Advocate for the petitioner and Mr Sanap, learned A.P.P. for respondents. Perused the impugned order passed by respondent no.1/D.I.G. Prisons, Aurangabad.

7. Mr Jaiswal, learned Advocate for the petitioner vehemently submitted that the ground assigned in the impugned order for rejection of furlough leave to the petitioner simply on the ground of negative Police report is not sustainable. To support his argument, he has placed reliance on the judgment of this Court in case of **Kisan s/o Soma Rathod Vs. The State of Maharashtra and Anr.**, reported in **2017 ALL MR 9 (Cri) 3561**, wherein it is held by this Court that if the Police report is not supported by any material regarding conduct of the petitioner, no more reliance can be placed on such negative Police report. The Division Bench of this Court was pleased to set aside the impugned order of rejecting the parole and directed the Divisional Commissioner, Aurangabad to release the petitioner on parole.

8. In the present case, on perusing the record and the impugned decision, there is no iota of evidence to support the apprehension raised by the jail authority. The petitioner is behind the bars and undergoing sentence since 26.7.2011. He is kept in open prison at Paithan. The jail authority has not produced any documentary evidence in order to support the apprehension regarding danger to the life of first informant, witnesses and relatives of the deceased, if the petitioner is released on furlough. Certainly, no more reliance can be placed on such adverse Police report in absence of any material, in view of the ratio laid down in case of **Kisan s/o Soma Rathod Vs. The State of Maharashtra and Anr.** (supra).

9. Having regard to the above reasons and in view of decision of this Court (supra), we are of the view that furlough leave application needs to be allowed.

10. Mr Jaiswal, learned Advocate for the petitioner pointed out that in view of COVID-19 Pandemic, it would be difficult for the petitioner to furnish Bond of his relatives as per Rules 6 and 10 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959. He requested to dispense with such exercise of furnishing Bond of the relatives of the petitioner. To support his argument, Mr Jaiswal, learned Advocate for the petitioner invited our attention to the Full Bench judgment of this Court in case of **Dipak s/o Sudhakar Wakatekar Vs. State of Maharashtra & Ors.**, reported in **2011 ALL MR (Cri) 1933**, wherein it is held that convict confined in open prison can be released on furlough by the authorities by dispensing with requirement of execution of bond by the relatives in view of Rule 6, Proviso and Rule 10 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959.

11. By taking help of abovesaid Full Bench decision, the petitioner can be released on furlough, by dispensing with requirement of execution of Bond by relatives.

12. We arrive at conclusion to allow this petition as under :

ORDER

(i) The petition stands allowed.

(ii) The petitioner namely Rahul s/o Limbaji Landge (C-5240) shall be released on furlough on furnishing cash security of Rs.5,000/- (Rs. Five thousand only) and on executing P.R. bond of Rs.5,000/- (Rs. Five thousand only) subject to usual terms and conditions as per Rules.

(iii) The requirement of execution of bond by the relatives of the petitioner is dispensed with.

13. Rule is made absolute in above terms.

(SHRIKANT D. KULKARNI, J.)

(RAVINDRA V. GHUGE, J.)

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