

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1333 OF 2020

Laxman s/o Baburao Gade,
Age: 33 years, occu: nil
Convict No.8395
R/o At present in Central Prison,
Aurangabad

Petitioner

versus

1. The State of Maharashtra
2. The Dy. Inspector General,
Central Prison, Aurangabad
3. The Superintendent of
Central Prison,
Aurangabad

Respondents

...

Miss. Bharati B. Gunjal, advocate for the petitioner

Mr. K.S. Patil, Public Prosecutor for respondents.

...

**CORAM: T.V. NALWADE &
SHRIKANT D. KULKARNI, JJ.**

Date: NOVEMBER 4th, 2020

...

PER COURT :-

1 The Petition is filed to challenge the order made by respondent No.2, by which the furlough leave is refused to the petitioner.

2 Both the sides are heard.

3 Furlough leave is refused on the ground that the petitioner is convicted for the offences punishable under sections 395 of IPC, section 3(I)(II) of Maharashtra Control of Organised Crime Act, 1999 (MCOC Act for short) and section 3(2) and section 3(4) of MCOC Act.

The maximum sentence of imprisonment given is 10 years but total fine of more than 15 lakhs is imposed for committing offences under the MCOC Act. The other reason given is that the Superintendent of Jail has not recommended to grant furlough leave and there is also adverse report of Police showing that petitioner cannot be released.

One more ground is that many other cases are pending against him.

4 In the past, this Court had granted furlough leave even to a person convicted under MCOC Act when he was sentenced of such imprisonment. However, this Court has refused to interfere in the order when there was huge fine amount like in the one imposed present matter. As in the past this Court did not interfere in the order and this Court had asked to deposit first the fine amount, which is huge one, no different treatment can be given to the present petitioner.

5 The other ground like adverse Police report, adverse report of Jail Superintendent and pendency of other cases are also given.

Learned counsel for the petitioner produced on record today a copy of the Judgment delivered in Sessions Case No.157/2010 showing that the present petitioner Laxman s/o Baburao Gade (Accused No.2) came to be acquitted in that case on 5.11.2011. Copies of the Judgment delivered in other matters are produced but they do not show that Laxman Baburao Gade, the petitioner was involved in those matters.

6 Learned counsel submitted that in other cases also, the petitioner is acquitted. However, there are no particulars of the pending cases mentioned in the order and there is a circumstance like in Sessions Case No.157/2010, he came to be acquitted, there is no reason to touch that point for decision of the present matter.

7 Furlough leave is not a matter of right and it is a discretionary power of the State. The State Government has given the grounds for which furlough leave can be refused and the offences for which the furlough leave cannot be granted are also mentioned. Rule 4 of the Prison (Bombay Furlough and Parole) Rules, 1959 shows that furlough leave can be refused to

the prisoners who are habitual prisoners, the prisoners who are convicted for the offences punishable under section 392 to 402 (both inclusive) of the Indian Penal Code. The other grounds are also given in Rule 4(2) which shows that furlough leave can be refused when in the opinion of Police/Jail Authority, the prisoner is likely to jump furlough. Admittedly, in the present matter, the petitioner is convicted for the offences punishable under section 395 of IPC and he has not completed his jail sentence given for this offence. Further, due to the huge fine amount imposed on him for offences punishable under MCOC Act, there is possibility of his jumping the furlough leave to avoid the payment of fine amount.

8 Due to all these circumstances, this Court holds that it is not possible to interfere with the order made by respondent No.2. In the result, the petition stands dismissed.

(SHRIKANT D. KULKARNI)
JUDGE

(T.V. NALAWADE)
JUDGE