

DDR

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.942 OF 2020

Amir Ismail Sayyed @ Billa
Indian National, Age : 29 years,
R/o. Chandnagar, Kausa,
Mumbra, District : Thane.
(at present lodged at Nashik Road
Central Prison - C/11382)

..Petitioner

vs.

1. The State of Maharashtra
through Chief Secretary, Home
Department, Mantralaya, Mumbai 400 032.

2. The Deputy Inspector
General of Prison, Central Division,
Aurangabad.

3. The Additional Director General
of Police, Inspector General of Prison
and Social Welfare Service,
Maharashtra State, Pune - 1.

4. The Superintendent of Nashik
Road, Central Prison, Nashik

5. The Assistant Commissioner of Police,
Kalwa Division, Thane.

6. The Senior Police Inspector,
Mumbra Police Station,
Mumbra, Thane.

..Respondents

Ms. Aisha Zubair Ansari for the petitioner.

Mr. J.P. Yagnik, APP for the State.

**CORAM : S.S.SHINDE &
M.S.KARNIK, JJ.**

**RESERVED ON : DECEMBER 10, 2020
PRONOUNCED ON : DECEMBER 14, 2020**

JUDGMENT : (PER M.S. KARNIK, J.)

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for the parties.

2. This is a Petition filed under Article 226 of the Constitution of India for grant of furlough. The petitioner was arrested on 14/6/2015 for the offence punishable under Section 302 of the Indian Penal Code ('IPC' for short) and sentenced to suffer life imprisonment by the judgment and order dated 26/9/2017 passed by learned Additional Sessions Judge, Thane.

3. The petitioner applied for furlough leave on 7/2/2018 which came to be rejected on 18/3/2019 in view of an adverse report against him. The Appeal filed against the order passed by the respondent No.2 also came to be rejected by the Appellate Authority - respondent No.3.

4. The application for grant of furlough came to be rejected on the ground of adverse police report and on the apprehension that the petitioner is likely to abscond. The main ground on which the application is rejected is that the proposed sureties do not appear to be adequate and that the petitioner's residence at Mumbra during the period of furlough may result in a law and order problem as Mumbra is a sensitive area. Learned counsel for the petitioner submitted that the apprehension expressed by the competent authority can well be addressed if the petitioner is granted furlough by imposing a condition of his residing outside the area of Mumbra. She further stated that his aunt Shama Bashir Ahmed Momin is willing to stand as a surety and willing to allow the petitioner to reside with her during this period.

5. Learned APP opposed the request of the petitioner and supported the impugned order. He invited our attention to the adverse report.

6. Having heard learned counsel for the parties, we are of the opinion that the petitioner is entitled to be released on furlough for the reasons hereinafter stated. There is nothing adverse reported about the petitioner's conduct during the period of his incarceration which is now more than 5 years. The concern of the competent authority that the petitioner's presence in Mumbra may lead to a law and order problem could be well taken care of by ensuring that the petitioner does not enter the area of Mumbra. Learned counsel for the petitioner, on instructions, has stated that during the period of furlough the petitioner would be residing with his aunt Shama Bashir Ahmed Momin at the following address :

R.No.151, Shanti Nagar Road,

Peerani Pada, Duniyat Masjid

Bhiwandi, Thane.

7. On instructions, she has further undertaken that the petitioner will not enter Mumbra or adjacent areas and that his aunt Shama Bashir Ahmed Momin is ready to stand as his surety. In our opinion, considering the stand taken by learned counsel for the petitioner and also to allay the apprehension expressed by

the competent authority, the following order will meet the ends of justice. Hence the following order :

ORDER

- (i) The Writ Petition is allowed in terms of prayer Clauses (a) and (b) which read thus :-

“(a) This Hon’ble Court be pleased to set aside and quash the rejection orders dated 18/3/2019 (Annexure “C”) passed by respondent No.2 and the order dated 30/10/2019 (Annexure “H”) passed by the respondent No.3 ;

(b) This Hon’ble Court be pleased to grant furlough leave for 28 days to the petitioner.”

- (ii) During furlough the petitioner to reside at the following address with his aunt Shama Bashir Ahmed Momin :

R.No.151, Shanti Nagar Road,
Peerani Pada, Duniyat Masjid ,
Bhiwandi, Thane.

- (iii) The petitioner shall report to Shanti Nagar Police Station once in a week on every Wednesday between 4.00 p.m. to 5.00 p.m. during this period.

- (iv) The statement made by learned counsel for the petitioner, on instructions, that the petitioner will not enter the area of Mumbra or its adjoining areas and that he will reside with his aunt Shama Bashir Ahmed Momin at the address mentioned above, is accepted.

8. Rule is made absolute accordingly.
9. The Writ Petition is disposed of accordingly.
10. This judgment will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this judgment.

(M.S.KARNIK, J.)

(S.S.SHINDE, J.)

Diksha
Rane

Digitally
signed by
Diksha Rane
Date:
2020.12.14
19:03:22
+0530