

Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1051 OF 2020**

Mangesh Datta Gade

Age-30 yrs,

(presently lodged at Yerwada Jail, Pune)

Permanent r/o. House No.1089

Gokhale Nagar, Near Gopal Krishna Mandal

Pune.

.. Petitioner

Versus

1. The State of Maharashtra

(Through Chaturshrungi Police Station)

2. The Superintendent of Jail

Yerwada, Pune Central Prison

3. The Inspector General

Pune, Maharashtra

.. Respondents

Mr. Bhavesh Thakur for the Petitioner.

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

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

**RESERVED ON : OCTOBER 13, 2020
PRONOUNCED ON : OCTOBER 15, 2020**

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

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

2. The Petitioner by this Petition filed under Article 226 of the Constitution of India and under Section 482 of Code of Criminal Procedure, 1973 challenges the order dated 30.01.2020 passed by the Additional Director General of Police and Inspector General of Prisons, Maharashtra State, Pune-1 rejecting the request made by the Petitioner for release on furlough.

3. The facts of the case in brief are as under :-

The Petitioner is the original accused No.3 in C.R. No.92 of 2014 which culminated in Sessions Case No.423 of 2014. The crime was investigated by the Senior Inspector of Police, Chaturshrungi Police Station. The Petitioner along with other co-accused were tried together for offences punishable under Section 302 r/w 34 of IPC, 4(25) of Arms Act and Section 37(1)(a) and 135 of Bombay Police Act. By judgment and order dated 27.02.2017 the Additional Sessions Judge, Pune convicted the Petitioner for an offence punishable under Section 302 r/w 34 of IPC and sentenced him to suffer life imprisonment. Criminal

Appeal No.377 of 2017 filed by the Petitioner challenging the judgment and order of the trial Court is pending in this Court.

4. The Petitioner was on bail during trial. Pursuant to the conviction by the trial Court, the Petitioner was taken in custody. The Petitioner had never applied for release on furlough since then. He therefore made the first request for furlough. The same came to be rejected against which the Petitioner filed an Appeal before the Inspector General of Prisons. By order dated 30.01.2020 the Appeal came to be rejected.

5. Learned counsel for the Petitioner urged that the authorities are not justified in refusing to release the Petitioner on furlough. According to him, this is the first time that the Petitioner has applied for furlough and therefore the apprehension expressed by the authorities that the Petitioner will threaten the complainant and court witnesses is unfounded. He would urge that while on bail during trial, there are no allegations that he threatened the complainant or any of the witnesses. He would further submit that his co-accused, one Rakesh Jadhav was released on Covid-19 emergency parole and stayed in the same area where the complainant/witnesses who expressed the apprehension reside and there is no untoward incident reported. According to learned counsel for the

Petitioner, Rakesh Jadhav has surrendered in time. Learned counsel submitted that his real brother is willing to stand as a surety and take his responsibility during this period of furlough. He would further submit that the Petitioner is even willing to subject himself to stringent conditions in the event he is released on furlough. Learned counsel would submit that even on parity the application of the Petitioner deserves to be allowed.

6. Learned APP opposed the Petition. He invites our attention to the reply filed by Ms. Rani Rajaram Bhosle, working as a Superintendent, Yerwada Central Prison, Pune on behalf of Respondents opposing grant of furlough. Learned APP also invites our attention to the adverse report submitted by the Chaturshrungi Police Station. In the report the objection of the complainant-Ganesh Hulgappa Alkunte is recorded apprehending danger to his life as well as his family if the Petitioner is granted furlough. Even the witnesses have expressed this apprehension. Based on this report the application for furlough is rejected. He would therefore urge that the Petitioner does not deserve to be released on furlough.

7. We have heard learned counsel. We have gone through the Petition, its annexures and Affidavit-in-Reply

alongwith the accompaniments filed by the Respondents. The Petitioner is in custody since his conviction on 28.02.2017 under Section 302 of the IPC by the trial Court. It is not in dispute that the co-accused Rakesh Jadhav was released on Covid-19 emergency parole and had resided in the same area where the complainant and the witnesses resided. Nothing has been brought on record alleging any untoward incident or criminal activity for which co-accused Rakesh Jadhav could be held responsible. Even the Petitioner was on bail during trial. There is nothing on record to show that during this period the Petitioner engaged in any criminal activities or threatened the complainant or witnesses who are residing in the same area.

8. In our opinion, considering these circumstances, rejecting the application for furlough only on the ground that the complainant and witnesses expressed an apprehension as regards threat to their life if the Petitioner is released on furlough appears to be harsh and unfounded. Even the co-accused Rakesh Jadhav was granted Covid-19 emergency parole and there are no allegations that the said Rakesh Jadhav has breached any of the conditions or involved in any criminal activity.

9. An apprehension is expressed by learned APP that if the Petitioner as well as Rakesh Jadhav reside in the village at the same time, then the possibility of the complainant or witnesses feeling threatened can not be ruled out. This apprehension of the learned APP can be well taken care of, in as much as, the Petitioner's release on furlough can be made effective only after the co-accused Rakesh Jadhav surrenders.

10. Furthermore, the release of the Petitioner on furlough can always be made subject to imposing suitable stringent conditions including reporting to the local police station at regular intervals. From the report it is further seen that the Petitioner's brother Deepak Datta Gade is ready to stand as a surety for the Petitioner. He has further stated that while on furlough, Petitioner would be residing with him and that he undertakes full responsibility to keep a check and control over the activities of the Petitioner and ensure that there would not be any breach of conditions imposed. He has further assured that he will take full responsibility of the Petitioner. In our opinion, the Petitioner should not be deprived of availing the benefit of furlough for the reasons mentioned herein above.

11. In this view of the matter, the present Petition deserves to succeed. Hence, the following order :-

ORDER

- i) The Writ Petition is allowed.
- ii) The order dated 30.01.2020 passed by Additional Director General of Police and Inspector General of Prisons, Maharashtra State is quashed and set aside.
- iii) The Petitioner is entitled to release on furlough for 15 days subject to such terms and conditions which the Respondent No.2-the Superintendent of Jail, Yerwada, Pune Central Prison may impose including reporting at the Chaturshrungi Police Station, Pune, at regular intervals.
- iv) The Respondent No.2 to ensure that the Petitioner's furlough is made effective only after the co-accused Rakesh Jadhav surrenders. In the event, the co-accused Rakesh Jadhav has already surrendered then the Petitioner's furlough release be processed forthwith.

12. Rule is made absolute in the above terms.

13. 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:
2020.10.15
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