

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

CRIMINAL WRIT PETITION NO. 1564 OF 2020

Mueen Mohammad Yusuf Kazi @ Mueen
@ Ronnie Briganza @ Hemant Shaha .. Petitioner

Vs.

1) State of Maharashtra
2) The Addl. D.I.G., Prisons,
Maharashtra State, Pune- 1,
3) The Dy. I.G. Prisons,
Western Region, Yerwada,
Pune - 6.

4) The Superintendent,
Kolhapur Central Prison.

.. Respondents

Smt. Farhana Shah for petitioner.

Dr. F.R. Shaikh, APP for State-respondent No.1.

**CORAM : SMT. SADHANA S. JADHAV &
N.J. JAMADAR, JJ.**

**DATE : 13th AUGUST 2020
(THROUGH VIDEO CONFERENCE)**

P.C.

1. Rule. Rule made returnable forthwith. With the consent of the learned Counsels for the parties the petition is taken up for final hearing at the stage of admission.

2. This petition assails legality, propriety and correctness of an order dated 15th June 2019 passed by the Deputy Inspector General Prisons, Western Division, Pune, whereby the application of the

Shraddha
K. Talekar

Digitally signed by
Shraddha K.
Talekar
Date: 2020.08.17
13:57:46 +0530

petitioner for release on furlough came to be rejected and another order dated 24th January 2020 passed by the Inspector General Prisons and Reforms, Maharashtra State, whereby the appeal against the said order also came to be dismissed.

3. The petitioner came to be convicted for the offences punishable under sections 302 and 201 of the Indian Penal Code, 1860 ('IPC') and sections 25(3) and 27 of the Arms Act, 1959. For the major offence punishable under section 302 IPC, the petitioner has been sentenced to suffer imprisonment for life by judgment and order dated 11th December 2017. The petitioner is undergoing the sentence at Kolhapur Central Prison, Kalamba. The petitioner preferred an application for furlough on 1st January 2019. The Competent Authority belatedly passed an order rejecting the application for furlough on unsustainable grounds. It was recorded that the Deputy Superintendent of Police has submitted an adverse report. The Superintendent of Prisons has not recommended the release of the petitioner on furlough. The Authority was of the definite opinion that in the event of release on furlough the petitioner would not return to prison, and abscond.

4. Being aggrieved, the petitioner preferred an appeal before the Inspector General of Prisons and Reforms on 12th July 2019. The Appellate Authority was persuaded to dismiss the appeal by the impugned order dated 24th January 2020 by recording *inter-alia* that the petitioner is a habitual offender. Since the petitioner is a native of Uttar Pradesh, the possibility of absconding cannot be ruled out. The petitioner has thus invoked the writ jurisdiction of this Court.

5. We have heard Smt. Farhana Shah, the learned counsel for the petitioner and Dr. F.R. Shaikh, the learned APP for State at some length.

6. The learned counsel for the petitioner submitted that the impugned orders suffer from the vice of mechanical consideration of the application for furlough and reflect total non-application of mind. The Competent Authority as well as the Appellate Authority have not objectively considered the material on record including the conduct of the petitioner during the period of incarceration. Emphasis was laid on the fact that a special remission of one month has been granted to the petitioner on account of the satisfactory conduct of the petitioner. Conversely, there is neither any incident of breach of prison rules or

violence nor there there is report to that effect. In this backdrop, the Competent Authority was not justified in rejecting the prayer for furlough on the premise that the Deputy Superintendent of Police gave an adverse report and the Superintendent of Prisons did not recommend the petitioner's case for release on furlough.

7. It was further submitted that, the apprehension that in the event of the release of the petitioner on furlough the petitioner would abscond, is also wholly unjustified. No cogent material is placed on record which would warrant drawing of such an inference. The Appellate Authority, according to the learned counsel for the petitioner, also fell in error in mechanically subscribing to the order passed by the Competent Authority. Evidently, the fact that the petitioner is allegedly a habitual offender and is a native of Uttar Pradesh were not noted by the Competent Authority in rejecting the application for furlough. The Appellate Authority adverted to those aspects sans any credible material.

8. In opposition to this, Dr. Shaikh, the learned APP for the State would support the impugned order. However, Dr. Shaikh was at pains to demonstrate the material on the strength of which it was recorded

that the petitioner is the native of Uttar Pradesh and there was a possibility of the petitioner fleeing away in the event he was released on furlough. Nor Dr. Shaikh could point any material to substantiate the grounds on which the application came to be rejected.

9. Sub-rule (4) of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 provides that a prisoner whose release is not recommended by the Deputy Superintendent of Police on the ground of public peace and tranquility shall not be eligible for release on furlough. Evidently, the recommendation not to release a particular prisoner on furlough ought to be made on the strength of objective material. Neither the sweet choice of the Authority nor the mere *ipse dixit* would suffice.

10. The adverse recommendation must be substantiated by material to show that the release of the prisoner would be prejudicial to the maintenance of public peace and tranquility. Such an opinion should be formed on the basis of objective material. A bald assertion that the concerned police authority has submitted an adverse report would fall foul of the principle of non-arbitrariness. It has been repeatedly emphasized that mere employment of the term “adverse opinion”

without there being any credible material to substantiate the same, would not be a justifiable ground to decline the prayer to release the prisoner on furlough.

11. On the aforesaid touchstone, reverting to the facts of the case, we find it rather difficult to accede to the submission of the learned APP that the authorities were justified in refusing to release the petitioner on furlough. None of the grounds ascribed by the competent authority and the appellate authority appear to draw support and sustenance from the material which is germane for deciding the application for release on furlough. The competent authority and appellate authority seem to have committed a familiar error of rejecting the application for furlough on the bald grounds that there is an adverse police report and there is a likelihood of absconding without anything more. In the process, the authorities lost sight of the object of releasing a prisoner on furlough. Denial of a legitimate application for release on furlough on wholly unsustainable grounds thus cannot be countenanced.

12. We are, thus, persuaded to allow the petition. Hence the following order.

- (i) The petition stands allowed.
- (ii) The impugned orders passed by the Competent Authority dated 18th June, 2019 and the Appellate Authority dated 29th January, 2020 are quashed and set aside.
- (iii) It is hereby declared that the petitioner is entitled to be released on furlough for a period of 15 days.
- (iv) The respondents are directed to release the petitioner on furlough for 15 days on usual terms and conditions to be specified by the Competent Authority.
- (iv) On release on furlough the petitioner shall attend the police station where CR No.103 of 2015, culminating in his conviction, was registered twice a week to mark his presence only.
- (v) This order be given effect to on or before 25th August, 2020.

13. Rule is made absolute in aforesaid terms. No costs.

14. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on a digitally signed copy of this order.

[N.J. JAMADAR, J.]

[SMT. SADHANA S. JADHAV, J.]