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

CRIMINAL WRIT PETITION NO.4523 OF 2019

Balu Baban Bhopi
(Through Jail - Prisoner No.C/10346,
Nashik Road Central Prison, Nashik) ..Petitioner

vs.

The State of Maharashtra ..Respondent

Mr. A. A. Desai for Petitioner.

Mr. S.R. Shinde, APP for State.

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

RESERVED ON : OCTOBER 21, 2020

PRONOUNCED ON : OCTOBER 23, 2020

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

Rule. Rule is made returnable forthwith. Heard finally with the consent of the parties.

2. This is a Petition through jail. The petitioner - Balu Baban Bhopi, by this Petition under Article 226 of the Constitution of India, is challenging rejection of his furlough by the Deputy Inspector General of Prison, Central Region, Aurangabad, vide an order dated 18/3/2019. The petitioner also challenges the order dated 12/7/2019 passed by the Additional Director General of

Police and Inspector General of Prisons, Maharashtra State, Pune, rejecting the Appeal filed by the petitioner.

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

The petitioner is convicted for the offence punishable under Section 302 of the Indian Penal Code ('IPC' for short) and sentenced to suffer life imprisonment by a judgment and order dated 7/12/2015 rendered by the District and Additional Sessions Judge, Kalyan in C.R.No.45 of 2011 tried in Sessions Case No. 118 of 2012. The Petitioner is lodged in Nashik Road Central Prison, Nashik. Along with the petitioner, his brothers Balchandra Baban Bhopi and Janardan Baban Bhopi are co-accused and convicted under Section 302 of the IPC in the said Sessions Case.

4. The petitioner made an application for furlough on 5/8/2019. The application made by the petitioner was rejected on the basis of adverse police report made by the Additional Police Deputy Superintendent, Thane Rural. As indicated earlier, even his Appeal came to be rejected by the Inspector General of Prisons, Maharashtra State, Pune.

5. The learned counsel for the petitioner submitted that the authorities are not justified in rejecting the application for

furlough on the ground that there is an adverse police report against the petitioner in the face of furlough being granted to the petitioner's brothers Bhalchandra and Janardan despite adverse police reports against them similar to the petitioner's adverse report. The learned counsel would submit that Bhalchandra and Janardan upon release on furlough have surrendered in time and there is nothing adverse reported against them during the period of this release. The learned counsel would submit that the petitioner is unfairly treated in the matter of grant of furlough and discriminatory treatment is meted to him.

6. The learned APP on the other hand supported the impugned orders. He invited our attention to the adverse police report dated 6/1/2019 of the Police Inspector attached to the office of Deputy Superintendent of Police, Thane Rural. The learned APP pointed out that as per the report, if the petitioner is released on furlough, the threat to the lives of the complainant, witnesses and their relatives cannot be ruled out. It is further pointed out that the petitioner along with the co-accused openly threatened the complainant and the witnesses with dire consequences if they are released. This happened during the course of the trial before the Sessions Court. The learned APP would submit that the possibility of law and order problem arising

in the area of Kulgaon Police Station and surrounding areas cannot be ruled out. The learned APP, therefore, prayed that the authorities are justified in rejecting the application.

7. We have heard the learned counsel for the petitioner and learned APP. We have gone through the application made by the petitioner and the impugned orders. We have also gone through the affidavit-in-reply filed by the authorities. We have also perused through the adverse report made against the petitioner.

8. As indicated earlier, the petitioner came to be convicted on 7/12/2015. The petitioner is in custody for a period of more than 8 years and 8 months. The adverse report states that the complainant and the witnesses were openly threatened by the petitioner and the co-accused with dire consequences during the course of the trial before the Sessions Court.

9. The principal contention of the learned counsel for the petitioner is that Bhalchandra and Janardan were granted furlough despite similar adverse reports as the petitioner against them. He, therefore, would contend that the impugned orders are arbitrary and discriminatory.

10. On the last occasion when this Petition had come up for hearing on 15/10/2020, the learned APP had prayed for time till 19/10/2020 to obtain the police report in case of the brothers of the petitioner viz. Bhalchandra and Janardan received from the concerned Police Officer before their release on furlough. The learned APP, on instructions, submitted that similar adverse report like the petitioner was also made by the Police Inspector in the case of Bhalchandra and Janardan.

11. The adverse report clearly reveals that the petitioner and the co-accused threatened the complainant and the witnesses with dire consequences upon their release. This happened during the course of the trial proceedings. The petitioner and the co-accused were convicted on 8/12/2015. The subsequent events clearly reveal that the co-accused Bhalchandra and Janardan were granted furlough twice and both of them have surrendered in time. Similar adverse report like the petitioner was also made against Bhalchandra and Janardan prior to their release despite which they were released on furlough. Nothing untoward has been reported against Bhalchandra and Janardan during the period of their release. In these circumstances, the petitioner being similar situate, rejection of the furlough only on the ground of un-substantiated apprehension on the part of the complainant

and the witnesses is clearly arbitrary and untenable. The impugned orders are infirm and therefore, call for interference.

12. The learned APP has submitted that Bhalchandra and Janardan have already surrendered. The impugned orders are therefore, quashed and set aside. The petitioner deserves to be released on furlough. Hence the following order :

ORDER

- (i) The Writ Petition is allowed.
- (ii) The petitioner be released on furlough for the permissible period under the rules or for a similar period as in the case of the co-accused Balchandra Baban Bhopi and Janardan Baban Bhopi, subject to such conditions as may be imposed on him.
- (iii) It is made clear that the petitioner shall abide by all the conditions that may be imposed on him during his release on furlough for the permissible period under the rules.
- (iv) The Writ Petition is disposed of accordingly.

(v) 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
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