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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.6181 OF 2019

Ganesh Devidas Shinde Alias Ganya] .. Petitioner

vs.

The State of Maharashtra & Anr.] .. Respondents

Ms.Ragini Ahuja i/b Dr.Yug Chaudhary, for the Petitioner.

Mr.K.V. Sasate, APP for the State.

**CORAM : B.P.DHARMADHIKARI &
N.R.BORKAR, JJ.**

DATE : 4TH FEBRUARY, 2020.

P.C.:

1] Heard. Perused the papers.

2] The Petitioner is in jail since the date of his arrest i.e. 27th September, 2011. He was convicted on 30th October, 2013 and 22nd December, 2016 in two different MCOC cases. He has undergone actual imprisonment of 6 years, 1 month and 2 days and with remission he has completed about 8 years and 2 months in jail.

3] The furlough leave sought by the petitioner has been rejected by Appellate Authority on 21st February, 2019 and by the First Authority on 30th November, 2018. The reasons are adverse police report and incompetent surety.

4] Learned APP also submits that fine amount in excess of Rs.10,16,500/- is to be recovered from him.

5] Learned counsel for the petitioner states that the alleged incompetency of surety or adverse police report is imaginary since the Petitioner has never been released after his conviction.

6] Learned APP submits that as an under-trial prisoner, the petitioner has absconded once.

7] As noted supra, the petitioner has not been released after his conviction on 30th October, 2013 i.e. for last more than 6 years. The death parole was sanctioned to him and he availed it in police protection. The offences against him are in Mumbai city only and he claims that his family resides in Thane only.

8] As the petitioner has not been released since last several years, apprehension expressed by police authorities about his threatening complainant or witnesses cannot be accepted. Similarly, if the surety is found incompetent, he can be asked to furnish a proper surety. Not only this, the Police Authorities can also impose other terms and conditions to ensure that he does not abscond.

9] In view of this position, we quash and set aside the impugned orders and direct the concerned Authorities to grant the Petitioner furlough leave after imposing suitable terms and conditions, including condition of proper surety. The order shall be complied with within four weeks from today. Accordingly, we allow the Petition partly and dispose it of.

[N.R.BORKAR, J.]

[B.P.DHARMADHIKARI, J.]