

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.170/2020

Mohd. Hasan Mahendi Hasan Sheikh (C/4717, Central Prison, Amravati)

...Versus...

Deputy Inspector General of Prison (East Region), Nagpur and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Ms Sonali Khobragade, Advocate for petitioner
Mrs. G.R. Tiwari, Addl. P.P. for respondents

**CORAM : Z. A. HAQ AND
AVINASH G. GHAROTE, JJ.**

DATE : 21/08/2020

1. Heard Ms Sonali Khobragade, learned Advocate for the petitioner and Mrs. G.R. Tiwari, learned Additional Public Prosecutor for the respondents.

2. The present petition challenges the order dated 7/12/2019, passed by the respondent no.1, rejecting the application of the petitioner for release on furlough leave for a period of 28 days.

3. The petitioner has been convicted for the offences under Sections 302, 120-B, 307, 120-B of Indian Penal Code, Section 3 Part-II (2) of the Terrorist And Disruptive Activities (Prevention) Act, 1987 (TADA Act, 1987), r/w Section 120 B of Indian Penal Code, Section 3 Part-III of TADA Act, 1987,

Section 3 Part-V of TADA Act, 1987, and Sections 386, 120-B (3), 449, 120-B, 450, 120-B, 452, 120-B of Indian Penal Code, by the TADA Court, Greater Bombay on 25/2/2015 in Special Tada Case No.1/2006 and has been sentenced to undergo life imprisonment (twice) and has undergone a sentence of 13 years 2 months 16 days when an application for release of the applicant on furlough for 28 days came to be filed.

4. The application for grant of furlough as filed by the petitioner came to be rejected by the respondent no.1, by the impugned order on the ground that the petitioner is a convict of Terrorist and Disruptive Activities and the police report was adverse, inasmuch as the same stated that the surety offered was the son of the petitioner, who did not own any immovable property but was residing in a tenanted room and was working as a courier boy, due to which the possibility of the petitioner not returning back was very much alive, apart from which, the petitioner was a member of the Abu Salem Gang.

5. It is material to note that this is the first furlough application by the petitioner. Though the learned Advocate for the petitioner claims that under law, the petitioner is entitled to be released on furlough, as a matter of right, however, such an entitlement is not always absolute and is

always subject to a case being made out as to the satisfaction of the authorities, based upon the annual conduct reports of the prisoner and such prisoner not being covered under the exceptions, as spelt out in Rule 4 Sub Rules 1 to 21 of the Prisons (Bombay Furlough and Parole) Rules, 1959. Thus, any entitlement for release on furlough would also depend upon the nature of the offence for which the petitioner/prisoner has been convicted and the possibility of his surrendering on the due date. That the entitlement is not absolute in law, is clearly spelt out by the provisions of Rule 4 Sub-Rule 1 to 21 of the Rules of 1959, which prescribes the exceptions to the eligibility, based upon categories of prisoners and the nature of offences, for which such prisoner has been convicted, which in turn is also based upon the annual conduct reports being good. That apart, had the entitlement been absolute, in law, then there was no question of calling for any report of the Jail Authorities and the concerned Police Station and checking the veracity of the surety offered and every convict would automatically be released on satisfaction of the norms. In a reformatory system of law, the reforms, ought not to be stretched to an extent that the purpose of the sentence, itself becomes absurd and is rendered nugatory.

6. In the instant case, the petitioner has been convicted under the Terrorist And Disruptive Activities

(Prevention) Act, 1987. The language of Sub Rule 13 of Rule 4 of the Rules of 1959, is clear and explicit, inasmuch as it carves out an exception from the normal rule of grant of furlough based upon the annual conduct reports of the prisoner, in the case when such prisoner is sentenced for offences, such as terrorist crimes, mutiny against State, kidnapping for ransom. Thus, the petitioner admittedly being convicted for a terrorist act under the provisions of TADA Act clearly falls within the excepted category as provided in Sub Rule 13 of Rule 4 of the Rules of 1959. We are clearly supported in our opinion by the judgment of the Division Bench of this Court in Criminal Writ Petition No.4017/2016 (Smt. Rubina Suleman Memon Vs. The State of Maharashtra and others) rendered at the Principal Seat on 22/12/2016, which takes a similar view in respect of a prisoner convicted under the provisions of the TADA Act, in light of the language of Sub Rule 13 of Rule 4 of the Rules of 1959.

7. The writ petition is, therefore, without any merits and the impugned order does not call for any interference. The writ petition is therefore dismissed.

JUDGE

JUDGE