

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 524 OF 2020

Amardeepsingh Baswantsingh Thakur,
Convict No.C/9901,
Presently at Central Prison,
Nagpur.

.... **PETITIONER**

// VERSUS //

- 1) Deputy Inspector General
(Prisons) (East), Nagpur.
- 2) The Superintendent,
Central Prison, Nagpur.

.... **RESPONDENTS**

Shri Mir Nagman Ali, counsel for the petitioner.
Shri A. A. Madiwale, Addl.PP for the respondents.

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 25th November, 2020

ORAL JUDGMENT : (Per : SUNIL B. SHUKRE, J.)

1. Heard. **Rule.** Rule made returnable forthwith.
2. Heard finally by consent of the learned counsel appearing
for the parties.

3. The reply filed on behalf of the respondent No.2 is far from satisfactory, rather it borders upon interfering in the administration of justice. We say so with all sense of responsibility. The least that is expected from the State is to be correct on facts and straight forward in submissions. The reply filed on behalf of the respondent No.2, does not fulfill any of these parameters. The reply is misleading and also takes a ground which is not stated in the impugned order, for resisting this petition. It appears that the respondent No.2 has taken the issue quite personally and, therefore, while filing an affidavit, he has displayed his utter dislike for the petitioner. Being a public servant, it is expected of respondent No.2 to be fair in performance of his duty and treat all the inmates of the jail as well as his staff members with equality. But, that has not been done by the respondent No.2. This time we would not pass any order which may be adverse to the interest of respondent No.2, but, we would like to put respondent No.2 and the officers like him who are public servants on guard by what we have said just now.

4. The impugned order shows that the furlough application of the petitioner has been rejected only because the police inquiry report was adverse to him. The reason for adverse police inquiry report is that the petitioner is undergoing the sentence in a serious crime like murder. There is no other reason given in the adverse police report.

This reason has been accepted as it is by respondent No.1 and this very reason went into rejection of the furlough application of the petitioner. Even the police inquiry report is incorrect as the petitioner is not a murder convict but a convict for economic offences. The impugned order, however, completely accepts the police inquiry report without bothering to verify the facts. The impugned order suffers from the error of non application of mind.

5. The respondent No.2 by filing a reply on a different note has supported the impugned order. A new reason is invented in the reply by respondent No.2, which was never considered by respondent No.1 while passing the impugned order. According to respondent No.2, the petitioner was not eligible for release on furlough in view of the prohibition contained in the Government Resolution dated 08.05.2020. This G.R. pertains to release of the prisoners for the purpose of decongesting the jails in order to contain Covid 19 pandemic. It has no application of general nature to the applications filed by prisoners for grant of furlough under rule 3 read with rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short the Rules, 1959). There is no disqualification for a prisoner undergoing sentence for an economic offences to seek furlough. But, the reply of respondent No.2 states that as there is a prohibition for grant of furlough under G.R. dated

08.05.2020 to a prisoner convicted of an economic offences, the application of the petitioner could not have been granted and has been rightly rejected by the respondent No.1. As stated earlier, respondent No.1, however, does not say so. It does not seem that the petitioner is not eligible to be released on furlough because he was convicted for an economic offence and one who suffers disqualification under the G.R. dated 08.05.2020.

6. The position of law as discussed earlier would show that the petitioner is indeed eligible to be released on furlough. Now the question would be whether he could be deprived of the benefit of furlough leave just because he has been convicted for economic offences. To the answer has to be emphatically in the negative. There is neither any prohibition under rule 4 of the Rules, 1959 for an economic offence convict to avail of furlough leave, nor is there any material placed on record by either of the respondents to show that the conduct of the petitioner has been so bad that it would be risky to release the petitioner on furlough or it would give rise to reasonable apprehension of the petitioner misusing the liberty if granted to him.

7. In the circumstances, we find that the impugned order must go as it falls foul of law and is bad on facts. However, before we pass any final order we deem it necessary to deal with yet another

important aspect of the issue of consideration of parole and furlough applications, which has been brought to our notice by learned counsel for the petitioner. He has invited our attention to the procedure prescribed in such matters in Home Department Circular dated 01.08.2007, delineating the time within which the applications are to be made and the time lines within which each of the stages contemplated in the circular is to be completed. These time lines come into play if any application for grant of parole or furlough is made at least 45 working days before the first day of leave sought by the jail inmate. Once this requirement is fulfilled, the burden would be upon the concerned officials to process the application within the time lines prescribed in this circular.

8. In the present case, it has been found that these time lines have not been followed by the concerned officials and the furlough leave application of the petitioner came to be decided finally by the respondent No.1 almost after ten months from the date of the filing of the application. We expect that the respondents and also all concerned officials across the State shall do well in respecting the procedure and time lines prescribed in the circular dated 01.08.2007. If same is not respected, the circular would carry no meaning and the erring officials

could also be considered to be the officers who do not perform their respective duty with due diligence.

9. In view of above, the writ petition is allowed.

10. The impugned order is quashed and set aside. The respondents are directed to grant furlough leave to the petitioner in accordance with his eligibility, upon suitable conditions consistent with the Rules, 1959 within a period of one week from the date of order.

11. The respondent No.2 is requested to be cautious in performing of his duty and refrain from any attempt from giving false information to the Court or misleading the Court while filing his reply on affidavit in future.

12. Copy of the order be sent to the Director General of Police, State of Maharashtra and all Inspector General of Police (Prisons of all Zones/Regions, State of Maharashtra) and respondent Nos.1 and 2 for information and necessary action.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE J.)