

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

**CRIMINAL WRIT PETITION NO. 706/2019**

- 1] Ankush S/o Sanjay Mendhekar  
Aged about \_\_\_\_ years,  
Convict No.C, 5233, detained in Central  
Prison, Amravati.

.... **PETITIONER**

// **VERSUS** //

- 1] The Superintend, Central Prison,  
Amravati.
- 2] The Divisional Commissioner, Amravati.

.... **RESPONDENT(S)**

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Shri M.J. Khan, learned A.P.P for the State

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**CORAM : V.M. DESHPANDE & ANIL S. KILOR, JJ.**  
**DATED : 26/10/2020**

**JUDGMENT** : (PER:- V.M. DESHPANDE, J.)

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

2] This is a writ petition for setting aside the order dated 10/02/2019 rejecting the application for furlough leave filed by the petitioner. After rejection, the petitioner who is undergoing life imprisonment

sent a petition to the Registry of this Court. The Registry of this Court registered it and Shri B.M. Kakde, learned counsel came to be appointed by Legal Aid Committee to represent the petitioner. Said learned counsel properly drafted the petition and the same is registered as Criminal Writ Petition No. 706/2019.

3] On 07/10/2019 notices were issued in the matter. In pursuance to the notice, the respondent no.1 filed reply. When this petition came up for hearing on March 13, 2020, the learned counsel for the petitioner was absent however, after perusing the reply, the Court directed the learned counsel for the A.P.P. to point out as to whether on earlier occasion any furlough leave or parole was enjoyed by the petitioner. In pursuance to the said, the respondent no.1 filed additional reply dated 17/03/2020. Today, when this petition was taken up for hearing, counsel for the petitioner does not remain present.

4] We have heard Shri M.J. Khan, learned A.P.P. for the State also perused the reply and additional affidavit filed by respondent no.1.

5] The petitioner was convicted by the learned Sessions Judge, Thane on 23/02/2018 for the offence punishment under Section 302 of the Indian Penal Code and he is undergoing the life imprisonment. On being

entitled for furlough leave, the petitioner submitted an application before the authority and the said application was forwarded to the Police Commissioner, Thane. According to the reply, the mother of the petitioner Smt. Surekha Medhekar who is shown as surety is unable to extend control over the petitioner if he is released. Also, the possibility of threats by the petitioner to the witnesses was not ruled out. Therefore, the furlough leave application was rejected.

6]           The additional affidavit would show that the petitioner is in jail since last 7 years and 10 months as on 17/03/2020 when that affidavit was filed and till that time he was not released either on furlough or parole.

7]           Furlough is a right granted in favour of the prisoner subject to the conditions as enumerated in Rule 4 of the Prison (Bombay Furlough and Parole) Rules, 1959.

8]           Though it is the objection that if the petitioner is released on furlough, there is a chance of extending threats to the witnesses concerned in the proceedings in which the petitioner is convicted, no material is placed on record as to on what material the subjective satisfaction is reached by the authority. In so far as the surety is concerned, it can always be directed to the petitioner to furnish any other surety to control the petitioner. The petitioner who is not released even for a single day in last near about 8 years, in our

view, the petition needs to be allowed. Consequently, we pass following order:

ORDER

- i) Writ petition is allowed.
- ii) The order dated 10/02/2019 passed by D.I.G. Amravati rejecting the furlough leave is hereby set aside.
- iii) The petitioner is entitled for furlough leave as is available under the Rules to him.
- iv) The Competent Authorities shall release the petitioner on furlough leave after completing the due procedure and asking the petitioner to give any surety instead of his mother Smt. Surekha Mendhekar.
- v) The counsel for the petitioner though, has not argued the matter finally, he will be entitled for the expenses inasmuch as the petition drafting and typing expenses. Therefore, the learned counsel for the petitioner can be given Rs.750/- by the Legal Aid Committee.

9] Rule is made absolute in above terms.

JUDGE

JUDGE