

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

957 CRIMINAL WRIT PETITION NO.979 OF 2021

KALYAN ARJUN SHEWALE (C-5292)

VERSUS

THE ADDL. DIRECTOR GENERAL OF POLICE AND
INSPECTOR GENERAL OF PRISONS, AURANGABAD AND
OTHERS

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Ms.Sharada P. Chate, advocate for the petitioner.
Mr.R.D. Sanap, APP for the respondent/State.

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CORAM : V.K. JADHAV

AND

SHRIKANT D. KULKARNI, JJ.

DATE : 07TH OCTOBER, 2021

PER COURT :-

1. Heard finally with consent at admission stage.

2. The petitioner is a convict eligible for furlough. The petitioner-convict has filed application for grant of furlough, however, the said application came to be rejected on the ground of adverse police report in respect of the surety proposed by the petitioner – convict. It has been observed in the said police report that the said surety is not residing in the village for last 10 years in terms of the report submitted by the Sarpanch of the village and even though the Police officials have tried to contact the surety on phone, the said surety was

not responding. Except this, there is no further adverse remark as against the petitioner – convict to release him on furlough.

3. Learned counsel for the petitioner – victim has brought our attention to the case of **Dipak Sudhakar Wakalekar V/s State of Maharashtra and others** reported in *2011 Cri. L.J. 3263*, wherein the Full Court of this bench has dealt with the issue and in paragraph 23 of the judgment has made the following observations :-

“23. In the light of the discussion made above, we hold that as per the proviso to rule 6 of the Rules 1959 a convict confined in open prison can be released on furlough by the Sanctioning Authority by dispensing with the requirement of execution of bond by the relatives.

We hold that a convict confined in open prison can be released on parole by the authorities by dispensing with requirement of extent in the absence of any contrary provision in the Special Act or any special provision excluding the jurisdiction or applicability of the Code.”

4. In the instant case, admittedly the petitioner-convict is in Open Prison, Paithan. In

view of the same, the petitioner – convict can be released on furlough but the Sanctioning Authority has declined to release the petitioner on furlough by dispensing with the requirement of bond by the relatives. The proviso to rule 6 of the Prisons (Bombay Furlough and Parole) Rules, 1959, specifically provides that the Sanctioning authority may dispense with the requirement for a surety where prisoners are confined in open prisons as defined in clause (b) of rule 2 of the Maharashtra Open Prison Rules, 1971.

5. In view of the same, there is no reason to deny the furlough to the petitioner – convict under the pretext of adverse police report. We expect the early action from the Jail Authority. In view of the same, we proceed to pass the following order :-

ORDER

1. Writ Petition is hereby allowed in terms of prayer clause "b".

2. The Petition is accordingly disposed of.

(SHRIKANT D. KULKARNI, J.)

(V.K. JADHAV, J.)