

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

31 CRIMINAL WRIT PETITION NO.1512 OF 2020

**MOHD. RAEES SHAHZADE ANSARI (C-8218)
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

.....
Shri. Rupesh A. Jaiswal, learned Advocate for Petitioner
Shri. S.J. Salgare, learned APP for Respondents/State
.....

**CORAM : T.V. NALAWADE AND
M.G. SEWLIKAR, JJ**

DATED : 18th January, 2021

PER COURT:-

1. Present proceeding is filed for relief of furlough leave and the order made by the respondents-authority dated 08/08/2019 by which furlough leave application is rejected, is also under challenge.

2. Heard both the sides for sometime.

3. The furlough application is rejected by respondents on following grounds:

- (i) There is adverse police report against the petitioner;
- (ii) The prisoner is likely to abscond, after getting released on furlough; and

(iii) Furlough is not vested right of the prisoner.

4. The other portion of the order shows that the petitioner is convicted for the offences punishable under Section 307, 506(II), 397 and 387 r/w 34 of the IPC and Section 3(1) (ii) of MCOC Act. The sentence of 10 years rigorous imprisonment and fine of rupees five lakh for the offence punishable under section MCOC Act is imposed. There is sentence for the offence punishable under Sections 307, 387 and 506(II) read with 34 of IPC also.

5. Learned counsel for the petitioner submitted that neither the special enactment of MCOC Act nor Section 387 of IPC are mentioned in Rule 4 of Prison (Bombay Furlough and Parole) Rules, 1959 and so the grounds given by the Prison Authority for rejection of furlough application are not convincing. Learned APP submitted that there is decision given by this Court, in respect of emergency parole under the Government Notification dated 08/05/2020, in which this Court has held that a person, who is convicted under the MCOC Act cannot be given the benefit of emergency parole under Notification dated 08/05/2020. Learned APP submitted that the conditions for emergency parole are also there in notification which are also similar to the condition for grant of furlough

leave. He submitted that the condition, that the prisoner ought to have availed furlough or parole in the past and at least on two occasions, he must have returned to jail in time on his own shows that the prisoner ought to have completed at least the minimum period of imprisonment for getting furlough and the same condition would be applicable for getting benefit of Govt. Notification dated 08/05/2020. He submitted that not only this circumstance but there are other circumstances, like the offence is mentioned in Rule 4(4), the circumstances mentioned in Rule 4(2), 4(4) 4(5), 4(6), 4(11) and 4(12). The provisions of some of aforesaid Rules are exceptions and they show that when a crime of particular nature mentioned in Rule 4(2) is committed, furlough leave is not to be granted. Similarly, when a person appears to be dangerous to society, furlough leave cannot be granted and due to the circumstance that, he is likely to jump furlough, furlough cannot be granted. The wording used in the Rules which involve the consideration of the opinion of police and jail authority shows that subjective satisfaction of the authority is involved in the matter in respect of those circumstances and for that the opinion of the police and jail authority is relevant. Learned APP submitted that in view OF Rule 19, the grounds given in Rule 4 can be read at the time of giving benefit of Notification dated 08/05/2020.

6. The provisions of aforesaid rules do show that the offence punishable under the provisions of MCOC Act is not specifically covered by Rule 4 as exception category. Learned counsel Shri. Jaiswal submitted that Nagpur Bench of this Court in Cri.Writ Petition No. 234 of 2019 (*Ajit Chandrakant Rane V/s. Dy.Inspector General of Prison, Nagpur*) has laid down that there is no restriction in granting furlough, when the petitioner/prisoner is suffering sentence due to conviction for the offence punishable under MCOC Act. He submitted that the said case was used by this court in Writ Petition no. 1673 of 2019 and by the order dated 11th of March, 2020, this Court had granted furlough in favour of Sk.Mohammad, the petitioner of that proceeding. Though, such order was made by this Court in Writ Petition No. 1955 of 2020, this Court has stayed that order in the proceeding filed by the State for recalling the order in Writ Petition No. 1673 of 2019.

7. The purpose behind putting aforesaid restrictions is to see that a person, who is unfit to come to the society due to reasons like, his previous activity and he may prove to be danger to society is not released on furlough leave. In Rule 4(2), it is made clear that a person convicted for offences punishable under Sections 392 to 402 of the IPC should not be granted

furlough leave. It becomes clear that the authority is expected to consider the circumstance that the person was committing offences only to make money and for that he was using force or threats. If the purpose behind Section 3 of MCOC Act is considered, it can be said that the purpose is similar and the special provision is made to see that such persons are kept behind bars bail is not ordinarily granted and they are tried for their activity, like forming syndicate for commission of the offences for monetary gains. Further, the powers given to the authority under other rules, like Rules 4(4) and 4(5), also show that overall situation and the circumstances in which the crime was committed needs to be considered and authority is required to form opinion as to whether the prisoner will be threat to public peace and tranquility. A person who is kept behind bars for commission of offence punishable under MCOC Act can be presumed as a person from whom there is a threat to public at large as he had committed the offence only for making monetary gain. Due to the latitude given to the authority for consideration of the report of police and report of jail superintendent, it can be said that it is always open to the authority to reject the application filed for furlough by a person, who is suffering sentence for offence under MCOC Act.

8. The learned APP pointed out to this Court that in

matters involving in MCOC Act, ordinarily, heavy fine is imposed. In the present matter, he submitted that fine of rupees five lakh has been imposed and this circumstance is sufficient to create a probability that the prisoner may jump furlough. This point also can be considered by jail authority and also by the police and that may affect the opinion which is required to be formed by the authority.

9. In the present matter, in the reasoning for rejection of application for furlough leave, though, the other circumstances are not mentioned, there is a mention of adverse police report. We need to go with the presumption that police must have considered aforesaid circumstances and that is why adverse report is given. There is no need to make more discussion about the right of the prisoner to get furlough. The prisoner has no vested right under Rule 17 to get furlough. In view of this circumstance, this Court holds that the following point needs to be considered by larger Bench :

(1) “Whether the circumstance that the prisoner is behind bars for offence punishable under provisions of MCOC Act can be considered against him, in view of the furlough rules and whether that can be treated as exception, like other specific offences mentioned in Rule 4.”

10. The Registry is to see that the present matter is kept before the Hon'ble the Chief Justice for referring the aforesaid point to larger Bench as there is contrary decision given by Nagpur Bench in the case cited (*supra*) and Principal Seat in Cri.Writ Petition No.1999 of 2019 (Ranvirsingh V/s. State of Maharashtra and others) decided on 04/06/2019.

11. Remove from board, till the decision of the larger Bench.

(M.G. SEWLIKAR, J.)

(T.V. NALAWADE, J.)

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