

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.794 OF 2020

Arif @ Baba Ayub Salar

.... Petitioner

versus

State of Maharashtra & Ors.

.... Respondents

.....

- Mr. Shailesh Chawan, Advocate for Petitioner.
- Mr. K. V. Saste, APP for State/Respondent.

**CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, JJ.**

DATE : 17 DECEMBER 2021

P.C. :

1. Heard learned counsel for the parties. Taken up for disposal.

2. The Petitioner's application to be released on parole was rejected by the Respondent No.2 vide order dated 16 August 2019. Thereafter the Petitioner preferred an Appeal which was rejected by the Respondent No.3 Director General of Police (Prisons) by an order dated 6 January 2020. The ground given in the order of rejection dated 16 August 2019 is that the Petitioner when was released on parole, did not return back to the prison and he was arrested after 331 days in the year 2011. When the Petitioner was on leave an NC complaint was filed against him under Section 506 of

the Indian Penal Code. It is also stated that the release of the Petitioner during the festival period will not be desirable. On this basis it was opined, relying on specific Rule 4 (10) of Maharashtra Prisons (Mumbai Furlough and Parole) Rules 1959, that if the Petitioner is released of parole, it is likely that he will not report back to the prison. The Appellate authority confirmed the rejection of parole and added one more ground that the conduct of the Petitioner in the prison is not satisfactory.

3. The learned APP pointed out that the rejection is of the year 2019 and the Petitioner can apply again for parole. The learned Counsel for the Petitioner states that though it is correct that the Petitioner can apply for parole again on the same ground the Petitioner's application would be rejected. The learned Counsel also submits that the additional ground given by the Appellate authority that the prisoner's conduct is not satisfactory is contrary to the report of the jail authority, which has categorically stated that the conduct is satisfactory.

4. First the observations of the Appellate authority regarding conduct of the prisoner is contrary to the record as the report states that the conduct was satisfactory. Secondly the Rule 4(10) referred by the Appellate authority is in relation to eligibility of furlough leave. The learned Counsel for the Petitioner submitted

that the eligibility for parole as per Rule 28 in which Rule 8(5), 10, 11 and 12 would apply in case of release of prisoners on parole and not Rule 4(10).

5. Even assuming Rule 4(10) applies, this Rule only states certain categories and contingencies that have to be taken into consideration by the authority to decide furlough leave which would be prevalent at that point of time when application is to be decided. The authority while considering the past conduct of Petitioner, will have to analyze the circumstances in which the Petitioner overstayed, where he was arrested from. It also needs to be considered whether apprehension of his likely abscondance still continues. The Appellate authority also has not referred to ground stated by the Petitioner regarding medical illness of the wife in totality, as according to the learned Counsel for the Petitioner adequate documents in support of the illness were placed.

6. Therefore considering these facts, we are of the opinion that when the Petitioner applies for a parole again, the authority will consider the application its own merits in light of what is observed in this order.

7. With this clarification and observations, the Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)