

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.556 OF 2021

Akshay s/o Jayant Sonawane]
Age : 18 years, Occu : Student]
R/o : Bharat Nagar, Near Sk Oil Mill]
Jalgaon.]
(Father of the Petitioner, Jayant S/o Abhimanyu]
Sonawane, Detained at, Nasik Road Central Prison]
As Convict No.6126]..... Petitioner.

Versus

1] The State of Maharashtra]
]]
2] The I. G. Prisons, Pune]
]]
3] The D.I.G. Prisons, Pune]
]]
4] The Superintendent]
Central Prison, Nasik Road]..... Respondents.

Mr. Rupesh Jaiswal for the Petitioner.
Mr. J P Yagnik, APP for the Respondent/State

CORAM : S. S. SHINDE,
MANISH PITALE, JJ

Reserved on : 11th FEBRUARY 2021
Pronounced on : 23rd FEBRUARY 2021

JUDGMENT :(PER S. S. SHINDE, J)

1 Rule. Rule made returnable forthwith and heard finally with the
consent of the learned counsel for the parties.

2 By this Writ Petition the Petitioner seeks the following substantial
reliefs :-

“(B) To quash and set aside order of Respondent Nos. 2 and 1 and dated 15/02/2020, and 10.08.2020 respectively and thereby direct Respondent No.3 to release Petitioner’s father on furlough leave.”

3 The present Writ Petition is filed by the son of accused, The accused has been convicted and sentenced to undergo imprisonment for life for the offences punishable under Section 302 of the Indian Penal Code by the Judgment passed by Additional Sessions Judge, Jalgaon. The accused was arrested on 07/11/2003 and was an under trial prisoner for approximately 3 years. It is the case of the Petitioner that the convict i.e. the father of the Petitioner applied for furlough to Superintendent, Central Jail Nasik. The said application was forwarded by the Jail Authority to the DIG, Prisons, Pune who has rejected the same by order dated 15/02/2020 on the ground that the father of the Petitioner had absconded when earlier released on furlough. Being aggrieved by the said order, the father of the Petitioner preferred an Appeal before Appellate Authority. The Appellate Authority has rejected the said Appeal on the ground that the convict had belatedly surrendered before the jail authority on the previous occasions when he was released on furlough/parole. Hence the present Writ Petition.

4 The learned counsel for the Petitioner submits that for the late surrender the name of convict has already been removed from remission register and since more than 5 years, he is not on remission register. It is

further submitted that the father of the Petitioner is not released on parole/furlough since 2016, and he had undergone the period of more than 12 years and 5 months of actual imprisonment. The learned counsel therefore submitted that both the Authorities have not considered the application of the Petitioner's father for furlough/parole leave in proper perspective. He, therefore, prays that the writ petition may be allowed.

5 On the other hand the learned APP appearing for the Respondent/ State submits that the accused has been convicted for the offence punishable under Section 302 and sentenced to suffer life imprisonment. He further submitted that the reasons recorded by both the authorities in rejecting the furlough to the accused are plausible reasons as the accused had surrendered belatedly every time when he was released on furlough/parole. He, therefore, prays that the writ petition may be rejected.

5 We have given our due consideration to the rival submissions of the learned counsel appearing for the parties. With their able assistance we have perused the pleadings, grounds taken in the Petition and annexures thereto.

6 It is an undisputed fact that the convict i.e. the Petitioner's father is an accused, and the learned Sessions Judge, Jalgaon convicted him for the

offence punishable under Section 302 and sentenced him to suffer life imprisonment. The learned counsel APP for the Respondent/State invites our attention to impugned orders passed by the Jail Authorities. We have perused the reasons recorded by both the Authorities. While rejecting the furlough both the Authorities have considered the Police report which is adverse. The name of the convict has been removed from the Remission Register. Both the Authorities have concurrently held that considering the past history of the convict that in the year 2008 when he was released on furlough/parole, he belatedly surrendered before the Jail Authority by 804 days and 858 days, and in the year 2013 when the convict was released on furlough/parole, he was surrendered belatedly by 67 days and 19 days. Therefore considering the past history of the convict, both the Authorities have rejected the application/appeal of the convict for furlough in terms of Rule 4(4), 4(10) and 4(20) of the Prisons (Bombay Furlough and Parole) Rules, 1959.

7 Rule 4(4), 4(10) and 4(20) which forms the basis of rejection of the application/application filed by the father of the Petitioner reads thus :-

“4 Eligibility for furlough :-

All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough :-

(1) to (11)

(4) Prisoners whose release is not recommended in Police

Commissionerate area by the Assistant Commissioner of Police and elsewhere, by the Deputy Superintendent of Police on the grounds of public peace and tranquility;

(5) to (9)

(10) Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough;

(11) to (19)

(20) who in the opinion of police/prison authorities are likely to jump furlough;

(21)”

8 The father of the Petitioner is an accused and convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment. He was in habit of surrendering him belatedly to the Respondent Jail Authority, when he was released on furlough. We, therefore, find substance in the contention raised by the learned APP that if the convict is released on furlough/parole, there are chances of his absconding and/or surrendering him belatedly. We are of the considered view that the reasons recorded by the Respondent-Authorities while rejecting application/appeal of the father of the Petitioner are legally sustainable.

9 In view of the aforesaid Rules 4(4), 4(10) and 4(12) of the Prisons (Bombay Furlough and Parole) Rules, 1959 and in view of the afore-stated reasons, the Petitioner's father is not eligible/entitled for the release on furlough/parole. In the past the father of the Petitioner has committed default by way of surrendering him at the appropriate time after release on furlough/parole. The Respondent-Authorities, therefore, right in holding that the father of the Petitioner is likely to jump furlough. The police report is also adverse to the convict. We, therefore, do not deem it appropriate to interfere with the concurrent findings recorded by both the Respondent-Authorities. There is no merit in the writ petition. Accordingly the writ petition stands rejected. Accordingly Rule stands discharged.

[MANISH PITALE, J]

[S. S. SHINDE , J]