

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

“(A) To Quash and Set Aside the order dated 18.07.2019 passed by the respondent no.3 (Deputy Inspector General of Prison Central Division Aurangabad) rejecting the application preferred b6y the petitioner for rleasing him on furlough and parole (accumulated leave) as per prison rules and further to Quash and Set Aside order dated 30.11.2019 passed by the respondent no.4 (Upper Police Director General and Inspector General of Prison and Correction Services State of Maharashtra Pune-1) rejecting the appeal preferred by the petitioner for releasing him on furlough and parole (accumulated leave) as per prison rules.”

3 The Petitioner herein is an accused who has been convicted and sentenced to undergo imprisonment for life for the offences punishable under Section 302 of the Indian Penal Code by the District Judge-4 & Additional Sessions Judge, Nashik. The Petitioner is in jail since 06/09/2013 i.e. for a period of more than seven years. Being aggrieved by the judgment and order of the learned Additional Sessions Judge, Nashik, the Petitioner preferred Criminal Appeal (Stamp) No.3460 of 2021 along with Interim Application No.673 of 2021 for bail before this Court, which is pending as on date. It is the case of the Petitioner that through the Respondent No.2 herein i.e. the Superintendent of Central Prison, Nashik, he preferred an application dated

15/04/2019 to the Respondent No.3 herein for furlough/parole, but the said application came to be rejected by Respondent No.3 vide order dated 18/07/2019. Being aggrieved by the said order dated 18/07/2019, the Petitioner preferred an Appeal before the Respondent No.4. However, the said Appeal was also rejected by the Respondent No.4 vide order dated 30/11/2019. The Petitioner challenges the said two orders by filing this Writ Petition.

4 The learned counsel appointed for the Petitioner submits that the Petitioner is in jail since 06/09/2013 i.e. for a period of more than seven years and since then he is unable to meet his old mother who is totally dependent on him. It is also submitted that as per the Maharashtra Prison Rules, the Petitioner is eligible for furlough on completion of three years imprisonment. He further submitted that the accused is to be considered as innocent unless proved guilty by final court of adjudication, and this principle is not considered by the jail authorities while considering the application/appeal of the Petitioner. The learned counsel therefore submitted that both the Authorities have not considered the application/appeal of Petitioner 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 Petitioner has been convicted for the offence punishable under Section 302 and sentenced to suffer life imprisonment. He further submitted that if the Petitioner is released on furlough/parole, there is danger to the life of the complainant and the prosecution witnesses as also the question of law and order may arise. He further submitted that if the Petitioner is released, he is likely to jump furlough/parole. He, therefore, submitted that the reasons recorded by both the authorities in rejecting the furlough to the accused are plausible reasons. He, therefore, prays that the writ petition may be rejected.

6 We have given 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.

7 It is an undisputed fact that the Petitioner is an accused and convicted by the learned District Judge-4 & Additional Sessions Judge, Nshik for the offences punishable under Section 302 of the Indian Penal Code and sentenced him to suffer life imprisonment. The learned counsel APP for the Respondent/State invites our attention to impugned orders passed by the Respondent No.3 and Respondent No.4. We have perused the reasons recorded by both the Authorities. While rejecting the furlough/parole both the Authorities have considered the Police report which is adverse. It is

mentioned in the said police report that if the convict released on furlough/parole, he may kill the complainant. It is also mentioned in the said police report that when the complainant had gone to Court, at that time the convict threatened the complainant. The convict also threatened the complainant from the jail that if the complainant does not withdraw the case, he will see the complainant. The complainant accordingly made complaint to the police. One of the reasons recorded by the jail authorities while rejecting the application/appeal of the Petitioner for furlough/parole is that, if the convict is released on furlough/parole, the question of law and order may arise. Therefore the Respondent No.3 vide order dated 18/07/2019 rejected the application of the Petitioner for furlough/parole, which order has been confirmed by the Appellate Authority i.e. Respondent No.4. Both the authorities rejected the application/appeal of the Petitioner in terms of Rule 4(4), and 4(20) of the Prisons (Bombay Furlough and Parole) Rules, 1959.

8 Rule 4(4) and 4(20) which forms the basis of rejection of the application/application filed by the Petitioner read 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 (3)

(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 (19)

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

(21)"

9 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. We have carefully perused the police report annexed to the Petition. The said police report is totally adverse to the Petitioner. There is an apprehension in the mind of the complainant and the prosecution witnesses that if the Petitioner is released, he may cause danger to their life. One of the reasons recorded by the Respondent No.3 and Respondent No.4 in their orders is that, if the Petitioner is released on furlough/parole, the question of law and order may arise. 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.

10 In view of the aforesaid Rules 4(4) and 4(12) of the Prisons (Bombay Furlough and Parole) Rules, 1959 and in view of the afore-stated

reasons, the Petitioner is not eligible/entitled for the release on furlough/parole. It is not in dispute that the Petitioner is in jail since 06/09/2013 that is for a period of more than seven years. However the police report is totally adverse to the convict. We find substance in the submission made by the learned APP that if the Petitioner is released, he is likely to jump furlough/parole. We, therefore, do not deem it appropriate to interfere with the concurrent findings recorded by both the Respondent No.3 and Respondent No.4.

11 In that view of the matter, the Writ Petition is dismissed. However, the Petitioner is granted liberty to apply afresh for furlough/parole after a period of six months. If the Petitioner files such an application after six months, the Respondent-authority shall decide the same on its own merits and in accordance with law

[MANISH PITALE, J]

[S. S. SHINDE , J]