

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.667 OF 2021

Ghansham Dattatraya Tambde]
Age 28 years,]
R/at – 1122, Sadashiv Peth, Pune]
At present Yerwada Central Prison, Pune]..... Petitioner.

Versus

1] Director General of Police (Prison)]
Maharashtra State, Pune-1]
Old Central Building, 2nd Floor, Pune]
2] Superintendent of Police (Prison),]
Western Division, Yerwada, Pune-6]
3] Asst. Police Commissioner,]
Swargate Division, Pune City]
4] The State of Maharashtra]..... Respondents.

Mr. Priya G Sarda for the Petitioner.
Mrs. A S Pai, APP for the Respondents/State.

CORAM : S. S. SHINDE,
N. J. JAMADAR, JJ

DATE : 03rd August 2021

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

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

2 By this writ petition filed under Article 226 of the Constitution of India, the Petitioner takes exception to the Order dated 02.07.2020 passed by the Respondent No.1 - Director General of Police (Prison), Maharashtra State, Pune, rejecting the Appeal filed by the Petitioner against the order dated 10.12.2019 passed by Respondent No.2 – Superintendent of Police (Prison), Western Division, Yerwada, Pune, by which order the Application for furlough leave filed by the Petitioner came to be rejected.

3 The facts which give rise to filing of this Writ Petition can be in brief, stated thus :-

 The Petitioner is a convict and is presently undergoing sentence imposed upon him at Yerwada Central Prison, Pune. The Petitioner has filed an application for release on furlough. The said application was rejected by Respondent No.2 by order dated 10/12/2019 on the ground that there is an adverse report against the Petitioner given by the Assistant Commissioner of Police, Swargate Division, Pune. The Appeal preferred by the Petitioner against the said order has also been rejected by the Respondent No.1 by order dated 02/07/2020. While rejecting the prayer of the Petitioner for furlough leave, both the Respondents-Authorities have taken into consideration the apprehension recorded in the adverse report that if the Petitioner is released on furlough, there is a threat to the lives of the complainant and witnesses.

4 The learned counsel appearing for the Petitioner submits that the report submitted by the Respondent No.3 – Asstt. Commissioner of Police was only on the basis of surmises and without any inquiry. He further submits that the Petitioner is in jail and he has applied for furlough for the first time. The Respondents-Authorities have not considered the facts in their proper perspective and rejected the application for furlough without assigning any cogent reason. The learned counsel for the Petitioner further submits that the brother and father of the Petitioner, who are the convicts in the same crime, are released on furlough and, therefore, there is no reason for discrimination in the case of the present Petitioner. He, therefore, submits that the Petitioner is entitled for furlough and prays that the Petitioner may be released on furlough.

5 The learned APP for the Respondents/State invites our attention to the report of the Respondent No.3 and the impugned orders passed by the Respondent Nos. 1 and 2 and submits that both the Respondents-Authorities have rejected the furlough to the Petitioner on the basis of the adverse report against the Petitioner submitted by the Respondent No.3. She supports the impugned orders and submits that the said orders do not warrant interference.

6 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.

7 It appears from the reasons assigned in the impugned orders that the application of the Petitioner to release him on furlough has been rejected on the ground that in case the Petitioner is released on furlough, there is a danger to the life of the complainant and witnesses. We have seen from the original record that the Respondent-Authority has recorded the statement of the witnesses and then reached to the conclusion that in case the Petitioner is released on furlough, there is a danger to the life of the complainant and witnesses.

8 During the course of hearing, this Court gave a suggestion to the learned Advocate appearing for the Petitioner that, if the Petitioner is willing to stay outside the Pune District, at a reasonable distance, so as to avoid possibility of coming into contact with the complainant and witnesses and the Petitioner gives surety from the said place where he is going to stay, in that case this Court may consider the prayer of the Petitioner to direct the Respondent-Authority to release the Petitioner on furlough.

 In response to the said suggestion, the Petitioner filed an affidavit of Sou.Vandana Vishnu Thakur, who is resident of Pune city. The said

Sou.Vandana Vishnu Thakur in her affidavit has stated that the Petitioner is her nephew and she is ready to stand as surety for the Petitioner, in case he is released on furlough. It is stated that she is residing within the jurisdiction of Bharti Vidyapeeth Police Station, Pune. It is further stated that the Petitioner will reside at Post Kurle, Tal. Mahad, District Raigad during the period of his release on furlough leave. The Petitioner will reside along with his maternal uncle at village Kurle. It is further stated that the Petitioner is not in a position to arrange the surety from village Kurle.

In our opinion, if the Petitioner, after release on furlough leave, is going to stay with his maternal uncle at village Kurle, which is in District Raigad, the Petitioner ought to furnish a surety, who is an ordinary resident of the said village. His maternal uncle can also stand surety. This Court insisted to have surety from village Kurle where the Petitioner is going to reside in case he is released on furlough for the simple reason that the said surety would have control over the Petitioner. However, the learned counsel appearing for the Petitioner expressed difficulty to furnish surety from the said village Kurle.

9 As already observed herein above, the apprehension expressed by the concerned police officers on the basis of the relevant material that, in case the Petitioner is released on furlough, that would cause danger to the life of the complainant and witnesses, is well founded, and therefore, we are unable to

persuade ourselves to grant the relief to the Petitioner. Importantly two other convicts i.e. the father and brother of the Petitioner, are already released on parole/furlough, and therefore, in case all three convicts from the said crime are released, at the same time, there may be danger to the complainant and witnesses.

10 In that view of the matter, the Criminal Writ Petition is dismissed. Rule stands discharged.

11 We make it clear that, in case the Petitioner is in a position to furnish surety from a place outside the Pune District, which is at a reasonable distance from the place of the complainant and witnesses, the Petitioner would be at liberty to file fresh Petition/Application.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]