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

CRIMINAL WRIT PETITION NO.2527 OF 2021

Pratap Tukaram Godse
Convict No.9042, Nashik Central Prison ... Petitioner
Nashik

Vs.

- i) The State of Maharashtra
- ii) The Deputy Inspector General
of Prisons, Aurangabad Division, Aurangabad ... Respondents
- iii) The Superintendent
Nashik Central Prison, Nashik

Mr.K.I.Khandelwal with Mr.S.A. Singh i/b M/s.Khandelwal
Associates for the Petitioner

Mr.V.B. Konde-Deshmukh, APP, for Respondent – State

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

**JUDGMENT RESERVED ON: SEPTEMBER 6, 2021
JUDGMENT DELIVERED ON: SEPTEMBER 14, 2021**

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

- 1.** The petition is filed seeking the following substantive reliefs:
- “a) this Hon’ble court be pleased to issue appropriate Writ, order or direction to quash and set aside the impugned order dated 05.03.2020 and order dated 08.09.2020;
- b) this Hon’ble Court be pleased to issue appropriate Writ, order or direction ordering and directing the Respondent No.4 to release the Petitioner on furlough leave on usual

terms and conditions and on such additional terms and conditions as this Hon'ble Court deems fit and proper;

2. By this petition, the petitioner has challenged the orders dated 5.3.2020 and 8.9.2020 passed by Respondent Nos.2 and 3 respectively. The petitioner's case is that he was arrested in relation to C.R. No.82 of 2007 registered with Sakinaka Police Station, Mumbai for the offences punishable under sections 302, 325 and 120 (b) of the Indian Penal Code. He was granted bail by the Sessions Court, Mumbai on 30th November, 2007. However, the Crime Branch Unit No.3 reinvestigated the case and invoked the Maharashtra Control of Organised Crime Act, 1999 and arrested the petitioner on 20th May, 2008. Thereafter, the Special Judge (MCOC) convicted the petitioner in the said case for the offences punishable under sections 3(1)(i), 3(1)(ii), 3(2) and 3(4) of the MCOC Act and sentenced the petitioner to life imprisonment. Against the said judgment of the Sessions Court, the petitioner had preferred a Criminal Appeal before this Court, however, the said Appeal was dismissed. The petitioner challenged the same in the Supreme Court by filing SLP (Cri.) No.003920 of 2020, which is pending.

3. On 10th April, 2013, pursuant to his application, the petitioner was granted parole leave by the competent authority of the prison. However, the petitioner did not report back to the jail in time. Therefore, pursuant to a complaint lodged with Bhayandar Police Station being FIR No.236 of 2013, the petitioner was arrested and was handed over to the Nashik Central Prison on 14.2.2015. Thus, the petitioner had jumped parole leave granted to him by 602 days for which a show-cause notice was issued by the prison authorities and on 4.6.20215, a punishment of indefinite exclusion/ deduction of remission was imposed on the petitioner. Thereafter, the petitioner filed an application for furlough leave which was rejected on 11.7.2016. Similar applications made by the petitioner for furlough leave were rejected on 28.9.2017, 2.4.2019 and 5.3.2020. Being aggrieved, the petitioner filed Criminal Writ Petition No.5132 of 2018 in this Court. The said petition was disposed off by this Court (Coram: B.P. Dharmadhikari & N.R. Borkar, JJ.) by order dated 21.2.2020 by observing that the orders imposing the punishments were not made available by the prisoner (petitioner) and thus, granted liberty to the petitioner to apply again for leave in accordance with law. Accordingly, a fresh application was preferred by the petitioner for furlough leave, however, the

said application was rejected on 5.3.2020. Hence, this petition.

4. Learned Counsel appearing for the petitioner submitted that the impugned orders are unjust and arbitrary inasmuch as they are passed with similar and familiar reasons like the earlier ones that there is an adverse police report, jumping of parole leave by 602 days, apprehension of jumping the furlough leave, proposed surety unable to keep control over the activities of the petitioner, etc. He submitted that although the petitioner had overstayed by 602 days, there are no incriminating circumstances against the petitioner during the said overstay. He submitted that for the said period of 602 days, the petitioner has given sufficient and plausible explanation such as poor financial condition and education of his younger brother, death of his mother, etc. It is submitted that the two other cases, which are mentioned in the impugned order, are the cases in which he was arrested from Nashik Central prison merely on suspicious grounds. In those two cases, he is already on bail and till today, no chargesheet is filed. Further, there was no material on record to substantiate the adverse police report dated 17.2.2020 which is totally vague and based on mere apprehension. It is submitted by the learned Counsel that after the

arrest of petitioner on 3.2.2015, he has not been granted any leave till today. It is further submitted that the apprehension of the police that there could be danger to the lives of the complainant and the witnesses, is totally unfounded, unsubstantiated and there is no material on record to support the same.

5. In support of his submissions, he relied on the judgments of Division Bench in *Sharad Keshav Mehta vs. State of Maharashtra & others* reported in **1989 Cr.L.J. 681** and *Sherkhan s/o. Mirbaj Khan Pathan vs. State of Mahanagarpalika* (**Criminal Writ Petition No.0071 of 2018 dated 22.2.2018**) to contend that furlough leave is a right of a convicted prisoner, which should not be denied on the basis of any vague, baseless and unsubstantiated police reports. The learned Counsel has, therefore, prayed that the impugned orders be quashed and set aside and the petitioner be released on furlough leave on such terms and conditions as this Court may deem fit and proper.

6. Mr.Konde-Deshmukh, the learned APP appearing for the Respondent – State, has opposed the Writ Petition and prayed that in view of the past conduct of the petitioner and the adverse police report, the petition needs to be dismissed.

7. We have carefully considered the submissions of the learned Counsel appearing for the petitioner and the learned APP appearing for the Respondent – State. With their able assistance, we have carefully perused the impugned order, grounds taken in the petition, the annexures thereto and report received from the jail authority. When the petitioner was released on furlough in the year 2013 for 28 days, instead of surrendering before the jail authorities on completion of the aforesaid furlough period, the petitioner absconded and remained outside the jail for 602 days. The petitioner was required to be arrested and brought back to the jail. The past conduct of the petitioner in not surrendering to the jail authorities on completion of furlough leave granted to him and overstay of about two years and the fact that he was arrested by the police and brought back to the jail, disentitles him from seeking any relief from this Court. In addition to the said reason, it appears that the following cases are pending against the petitioner:

- 1) C.C. No.760/PW/2008 in 37th Court, Esplanade
- 2) C.R. No.236 of 2013 under section 224 of Indian Penal Code
- 3) C.R. No.467 of 2015 registered with MIDC Police Station pending Additional Chief Metropolitan Magistrate's 22nd Court, Andheri

8. It is also apprehended that the proposed surety suggested by the petitioner may not be in a position to control the activities of the petitioner in case of his release on furlough leave.

9. Upon careful perusal of the reasons assigned in the impugned order, we are of the opinion that the said reasons are not perverse and are in consonance with the record of the petitioner.

10. In that view of the matter, we are unable to persuade ourselves to grant the reliefs as sought by the petitioner. Hence, the petition is rejected.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)