

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

CRIMINAL WRIT PETITION NO. 1157 OF 2021

Archana Singh W/o Virendra Thakur
Age: 37 years, Occ: Housewife.
R/o. Room No. 360, Shantinagar,
S.P Road, Near Gausiya Masjid,
Wadala East, Mumbai.

(Husband of the Petitioner, Virendra S/o
Drikpalsingh Thakur, Detained at, Kolhapur
Central Prison, Kalamba As Convict No. 7431) ...**PETITIONER**

Versus

1. The State of Maharashtra,
 Through Inspector General of Prisons;
2. Dy. Inspector General (Prison)
 Central Zone- Pune,
3. Superintendent of Jail,
 Kalamba Kolhapur.

...**RESPONDENTS**

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Mr. Rupesh A. Jailswal, for Petitioner.
Mr. Deepak Thakre, PP a/w. Mrs. S.D. Shinde, APP for Respondent-State.

...

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

**RESERVED ON : 31st MARCH, 2021.
PRONOUNCED ON: 5th APRIL 2021.**

JUDGMENT [PER S.S. SHINDE, J.]:

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

2. Factual matrix of the case is as under:-

The Petitioner is wife of convict namely Virendra Thakur who is convict no. 7431 at Kolhapur Central Prison, Kalamba, Dist. Kolhapur. It is stated that the convict was arrested in the month of August 2013. Thereafter, the convict was tried for the offences punishable under Section 302 of IPC and convicted by Sessions Court, Mumbai, by judgment and order dated 27.12.2019 in Special Case No. 2 of 2014. He was sentenced to life imprisonment. Initially, he was in Yerwada Jail at Pune, however, he came to be transferred to Kolhapur Central Prison, Kalamba, Dist, Kolhapur.

3. It is the case of the petitioner that the convict i.e. her husband has undergone 7 years and 7 months imprisonment and including remission more than 8 years. The convict applied for furlough, however by order dated 23rd June 2020, his prayer for release on furlough had turned down by the concerned authority. Being aggrieved by the order dated 23rd June 2020 passed by Respondent No. 2, the convict filed appeal before the 1st respondent. The said appeal came to be rejected on 02.11.2020. Being aggrieved by the order of appellate authority, the present petition is filed.

4. Mr. Jaiswal, learned counsel appearing for the petitioner submitted that the observations made by 2nd respondent while rejecting the application of convict that there is threat to the life of witnesses, are vague and general. The relatives of the convict are ready to stand as surety and in

case, the convict is released, they are ready to keep control on his activities. Learned counsel submitted that this Court may consider the prayer to release the convict on furlough by imposing stringent conditions and direct the convict to attend the police station on daily basis. The convict is ready to give solvent surety and will also abide by the terms and conditions imposed by this Court.

5. Learned PP appearing for Respondent-State relying upon the reasons assigned in the impugned orders submitted that the petition is devoid of any merits and same may be rejected.

6. We have given due consideration to the rival submissions. With the able assistance of learned counsel appearing for the petitioner, learned PP, we have perused the pleadings and grounds taken in the petition and annexures thereto. It appears that the husband of the petitioner i.e. convict has not been released even once after his conviction. We have carefully perused the impugned order dated 23rd June 2020 passed by the Respondent No. 2. It appears that the office of Deputy Commissioner of Police, Chembur, had given adverse report. The another reason given in the impugned order is that, in case, the convict is released on furlough he is likely to abscond. The concerned authority has invoked Sub Rule 20 of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (hereinafter referred to as 'said Rules'), in support of the reason given in the impugned

order that in case the convict is released he is likely to abscond. The third reason stated in the impugned order is that it is not the right of the convict to ask for furlough leave. The said order was assailed by the convict before the appellate authority, however, appellate authority confirmed the order passed by Respondent No. 2.

7. The respondents have not brought on record documents showing that the husband of the petitioner was earlier released on furlough or parole. It is not in dispute that the convict has undergone more than 7 years imprisonment, and he was never released on furlough/parole. At this juncture it would be apt to reproduce herein below Rule 1(A) of the said Rule.

****[1(A). Objectives:-***

Furlough and Parole leaves to inmates are progressive measures of correctional services. The objectives of releasing a prisoner on leave are:-

- (a) To enable the inmate to maintain continuing with his family life and deal with family matters,*
- (b) To save him from evil effects of continuous prison life,*
- (c) To enable him to maintain and develop his self-confidence,*
- (d) To enable him to develop constructive hope and active interest in life.]*

The Rule 1(A) of the said Rule has been inserted by the

Notification No. MIS-1316/C.R.669/16/PRS-3, dated 16.04.2018. Rule 3 of the said Rule mentions about when the prisoner may be granted furlough. In the facts of the present case, sub Rule 3(C) is relevant, which reads as under:-

****[3. When Prisoner may be granted furlough.***

(A) -----

(B)-----

(C) A prisoner sentenced to imprisonment for a period of exceeding fourteen years,

(1) Shall become eligible for furlough on completion of three years of actual imprisonment.

(2) Shall become eligible for second release on furlough after completion of one year of actual imprisonment from the date of last return from furlough.

(3) Shall become eligible for subsequent releases on furlough after completion of six months of actual imprisonment from the date of last return from furlough.

(4) Prisoner shall not be given furlough exceeding 21 days in a calendar year for the first five years of his imprisonment and thereafter for the period not exceeding 28 days.

8. Keeping in view the aforesaid provisions and in particular Rule 3(C)(1) of the said Rule, there is no doubt that the husband of the petitioner is entitled to be released on furlough.

9. In the facts of the present case, it appears that the Respondent No. 2 has relied upon Sub Rule 20 of Rule 4 of the said Rules, which reads as under:-

****[4. Eligibility for furlough-***

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

(1) -----

(2) -----

(3) -----

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

10. In our opinion except general observations by Respondent No. 2, nothing specific is brought on record to hold that in case, the husband of the petitioner is released on furlough he is likely to jump furlough. Therefore, keeping in view the objectives of furlough leave to inmates, we are of the view that the husband of the petitioner is entitled to be released on furlough.

11. It appears that another reason assigned in the impugned order for not acceding to the prayer of convict to release him on furlough is that, there is adverse report received from the office of Deputy Commissioner of Police, Zone-6, Chembur. No specific statements of the witnesses are

recorded, or specific material has been brought on record by the respondents, so as to, sustain the said adverse report.

12. Learned counsel appearing for the petitioner has tendered across the bar an affidavit of Ms. Pushpa Shashi Pratap Singh, resident of Room No. 6, Raj Bahadur Singh Chawl, Opp. Mohan Nagar, Sion, Mumbai-400022. In the said affidavit it is stated that Petitioner's husband is her real brother and she knows address of petitioner. It is further stated that she is ready to take all responsibility that in case the Petitioner's husband is released, the Petitioner's husband will abide by all the conditions which are imposed upon him and in case of any breach of such condition, she will be responsible. It is further stated that the deponent will ensure that the convict will abide by all the conditions and attend the police station.

13. In the light of discussion in foregoing paragraphs, in our opinion, the ends justice would be met in case, the petitioner is released on furlough on stringent conditions. Accordingly, we pass the following order:-

ORDER

A) The Writ Petition is allowed in terms of prayer clause (B).

The impugned orders dated 02.11.2020 and 23.06.2020 passed by Respondent No. 1 and 2 respectively, are quashed and set aside.

B) The husband of the Petitioner i.e. convict namely Virendra Drikpalsingh Thakur be released on furlough for the period stated in the Prisons (Bombay Furlough and Parole) Rules, 1959, on following conditions:

(i) The husband of the Petitioner i.e. convict namely Virendra Drikpalsingh Thakur will stay for the said period at residence of his sister namely Ms. Pushpa Shashi Pratap Singh, at Room No. 6, Raj Bahadur Singh Chawl, Opp. Mohan Nagar, Sion, Mumbai-400022.

(ii) The convict shall not tamper with the prosecution witnesses or evidence. The convict shall not directly or indirectly extend threats to the witnesses.

(iii) The convict shall not enter the area/locality in which his wife is residing.

(iv) The convict shall attend the nearest police station on alternate day.

(v) The convict shall be released on furlough, on fulfilling conditions in Rule 10 of the Prisons (Bombay Furlough and Parole) Rules, 1959.

(vi) On completion of furlough period the convict shall surrender to the Kolhapur Central Prison, Kalamba, Dist. Kolhapur, without any delay.

- C) Rule made absolute to above extent. The writ petition stands disposed of accordingly.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)