

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

CRIMINAL WRIT PETITION NO. 1583 OF 2020

Dastgir Gafur Shaha
Aged 58 years, Occupation- Labour,
R/o. Sanjay Nagar, Idgaha Parisar,
Shrirampur, Tal- Shrirampur,
Dist. Ahmednagar.
At present- Central Jail, Kalamba,
Tal & Dist. Kolhapur.

...PETITIONER

Versus

1. The State of Maharashtra
2. The D.I.G. Prison (Western Region), Pune-6.
3. The I.G. Prison, Pune-1.
4. The Superintendent
Kolhapur (Kalamba) Kolhapur 7.

...Respondents

**ALONG WITH
CRIMINAL WRIT PETITION NO. 331 OF 2021**

Gafur Sandu Shaha
Aged 58 years, Occupation- Laborer,
R/o. Sanjaynagar, Idgaha Area, Shrirampur,
Tal- Shrirampur, Dist Ahmednagar

On behalf of

Dastgir Gafur Shaha
Aged 58 years, Occupation- Labour,
R/o. Sanjay Nagar, Idgaha Parisar,
Shrirampur, Tal- Shrirampur,
Dist. Ahmednagar.
At present- Central Jail, Kalamba,
Tal & Dist. Kolhapur.

...PETITIONER

Versus

1. State of Maharashtra
Through P.S.I. Shrirampur City Police
Station, Tal. Shrirampur,
Dist. Ahmednagar.
2. Superintendent of Jail
Rehabilitation of jail Maharashtra State
And Special Police Inspector General (Jail)
South section, Bayculla, Mumbai No. 8.
3. The Superintendent of Jail
Central Jail, Kalamba, Kolhapur
Tal & Dist. Kolhapur.

...**RESPONDENTS**

Mr. Khwaja Shaikh for Petitioner.
Mrs. S.D. Shinde, APP for State.

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**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. The convict namely Dastgir Gafur Shaha has directly sent an application from jail to this Court, which is registered as Criminal Writ Petition No. 1583 of 2020. It appears that Mr. R.S. Sadaphale and Mr. A.G. Jadhav have filed Criminal Writ Petition No. 331 of 2021. Both the petitions are heard together and are being disposed of by this common judgment and order.

3. In Criminal Writ Petition No. 1583 of 2020, it is the contention of the petitioner that an application to release him on furlough has been rejected for unsustainable reasons. The Petitioners prayer has been rejected relying upon the Sub Rule 4 of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (hereinafter referred to as 'said Rules'). The Petitioner has placed reliance on Rule 17 of the said Rules. It is stated that the law confirms right to prisoner to avail furlough. Unless there are exceptional reasons not to grant furlough leave, the convict is entitled for furlough leave as a matter of right. It is stated that the Petitioner has completed more than 6 years imprisonment and he was never released on furlough or parole in the past. It is stated that the family members of the Petitioner are ready to stand as surety, and execute the surety bond in case, the petitioner is released on furlough. It is specifically stated that the petitioner's father is ready and willing to stand as surety. The report submitted by police is silent about threat, if any, to the public in case, the petitioner is released on furlough. Therefore, it is prayed that the Petitioner may be released on furlough.

4. In Criminal Writ Petition No. 331 of 2021, the Petitioner who is father of the convict on behalf of convict prayed that the convict be released on 45 days parole.

5. Learned APP appearing for Respondent-State vehemently opposed the prayers in both the petitions on merits and prayed for rejection of both the petitions.

6. We have considered the submissions of both sides. With the able assistance of learned counsel appearing in Criminal Writ Petition No. 331 of 2021 and learned APP, we have carefully perused the pleadings and grounds taken in the petition, annexures thereto and the impugned order passed by respondent authority. It appears that the Petitioner filed Criminal Application No. 2274 of 2019 in Criminal Appeal No. 770 of 2015 (Dastgir Gafur Shaha Vs. State of Maharashtra) for bail. The said application was rejected by the Division Bench (Coram: T.V. Nalawade & R.G. Avachat, JJ.) on 10.10.2019. Thereafter, it appears that the convict had filed Criminal Writ Petition No. 557 of 2020 (Dastgir Gafur Shaha Vs. State of Maharashtra) which was heard by the Division Bench (Coram: Ravindra V. Ghuge & Shrikant D. Kulkarni, JJ.) and decided on 23.06.2020, thereby directing the Superintendent of Jail, Kalamba, Tal & Dist. Kolhapur, to decide the application of the Petitioner within four weeks from the date of passing of the said order.

7. Upon careful perusal of application filed by the Petitioner before the respondent-authority praying therein to release him on furlough,

one of the reason stated is that his mother is seriously ailing and nobody is to look after the mother of the convict.

8. At this juncture it would be apt to reproduce herein below objectives of mentioned in Rule 1(A) of the said Rules.

****[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.]*

9. It is an admitted position that the petitioner was never released either on furlough or parole. Since, the petitioner has undergone more than 6 years imprisonment, in view of Rule 3(C), which is reproduced herein below, the petitioner is entitled to be released on furlough.

****[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.*

10. It appears that one of the reason assigned in the impugned order is that the petitioner was never released on furlough/parole and therefore, such convict cannot be released on emergency Covid-19 parole and accordingly prayer of the petitioner to release him of parole was turned down.

11. This issue has been dealt with by the Bombay High Court, bench at Aurangabad, in the case of Kavita w/o Dilip Baviskar v/s. The State of

Maharashtra (Coram: T.V. Nalawade & Shrikant D Kulkarni, JJ)¹, wherein a view is taken that whether the convict was released on one occasion or twice on parole in past and reported back in time, had been introduced with an intention to see that the convict shall return to jail in case he is released on emergency parole. It is further held in the said case that through the petitioner therein had released only once on parole in the past, he was entitled to be released on emergency parole. In view of aforesaid judgment the prayer of the petitioner to release him on parole should not have been rejected on the ground that he was not released earlier twice on furlough or parole. The said reason is legally unsustainable in view of aforesaid pronouncement of this Court.

12. So far petitioners prayer for furlough is concerned, there is no legally sustainable reason assigned by the respondent while rejecting the prayer of the petitioner. In one of the communication by the jail authority at Yerwada addressed to the Kolhapur Central Prison, Kalamba, Kolhapur, it is stated that the Petitioner is not maintaining the discipline in the jail at Yerwada, and because of this reason, the petitioner was transferred to Kolhapur Central Prison, Kalamba, Kolhapur. The aforesaid reason given is not supported by any specific activity of indiscipline of the convict when he was in Yerwada Jail. Be that as it may, since the petitioner is in jail for more

1 Criminal Writ Petition No. 571 of 2020.

than 6 years, in order to achieve the objective of granting furlough to the convicts, in our opinion, the petitioner deserves to be released on furlough for the period as admissible in the said Rules. In case, the petitioner is not released the object/legislative intent to make provisions for furlough would get defeated.

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 leave .Accordingly, we pass the following order:-

ORDER

- A) The Writ Petition No. 1583 of 2020 is allowed. The impugned order dated 04.02.2020 is quashed and set aside.
- B) In view of disposal of Criminal Writ Petition No. 1583 of 2020, nothing survives for consideration in Criminal Writ Petition No. 331 of 2021. Hence, same stands disposed of.
- C) The Petitioner be released on furlough for the period stated in the Prisons (Bombay Furlough and Parole) Rules, 1959, on following conditions:
 - (i) The Petitioner shall not tamper with the prosecution witnesses or evidence.
 - (ii) The Petitioner shall attend the nearest police station on alternate day.

(v) The Petitioner 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 Petitioner shall surrender to the Kolhapur Central Prison, Kalamba, without any delay.

D) Rule made absolute to above extent. The writ petitions stand disposed of accordingly.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)