

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

INTERIM APPLICATION NO. 1349 OF 2021

IN

WRIT PETITION NO. 1051 OF 2020

Mangesh Datta Gade

...Applicant

Versus

The State of Maharashtra & Ors.

...Respondents

...

Mr. Bhavesh M. Thakur for Applicant/Petitioner.

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

...

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

DATE : 15th JULY, 2021.

P.C.:

1. This application is filed by the applicant in Writ Petition No. 1051 of 2020. The said writ petition was heard by this Court (Coram:- S.S. Shinde & M.S. Karnik, JJ.) and disposed of by judgment/order dated on 15th October 2020. The operative part of the said judgment reads as under:-

ii) The Writ Petition is allowed.

ii) The order dated 30.01.2020 passed by Additional Director General of Police and Inspector General of Prisons, Maharashtra State is quashed and set aside.

Iii) The Petitioner is entitled to

released on furlough for 15 days subject to such terms and conditions which the Respondent No. 2-the Superintendent of Jail, Yerwada, Pune Central Prison may impose including reporting at the Chaturshrungi Police Station, Pune, at regular intervals.

iv) The Respondent No. 2 to ensure that the Petitioner's furlough is made effective only after the co-accused Rakesh Jadhav surrenders. In the event, the co-accused Rakesh Jadhav has already surrendered then the Petitioner's furlough release be processed forthwith.

2. It is the contention of learned counsel appearing for the applicant/petitioner that due to aforesaid clause (iv) of the operative order, the applicant is not in a position to avail the furlough leave. Therefore, by way of filing this application the applicant has sought modification of the clause (iv) of the order dated 15th October 2020.

3. Learned counsel appearing for the applicant has tendered across the bar, affidavit of one Mr. Sandip Shivaji Adasul, who is relative of the petitioner from maternal side. The same is taken on record. The paragraphs 1 to 4 of said affidavit read as under:-

1. *I say that I reside at the above address since my childhood. I say that I know Mangesh Gade as he is my maternal cousin brother.*
2. *I say that my residence mentioned above is approximately 25-30 kms away from the Pune city. It comes within rural gramian area of Pune District.*
3. *I further say that if at all this Hon'ble Court considers releasing Mangesh Gade on furlough leave. I say that Mangesh Gade will reside with me at above mentioned address and will not enter the Pune city.*
4. *I say that the above contents were read and explained to me in Marathi whatever stated above is true and correct and best of my knowledge and I believe to be true.*

4. It is further submitted that in view of Clause (Iii) of the judgment dated 15th October, 2020, the applicant will have to report Chaturshrungi Police Station, however, the applicant/petitioner has given an oral undertaking that in case he is released on furlough, he will not enter into the Pune City. Therefore, the condition in Clause (Iii) of the operative order needs to be modified.

5. Learned counsel for the applicant/petitioner on instructions submits that in case the petitioner is released on furlough leave, he will not enter into the Pune City.

6. Though, this Court (Coram:- S.S. Shinde & M.S. Karnik, JJ.) has passed the order/judgment dated 15th October, 2020, the petitioner has not availed furlough leave due to condition mentioned in aforesaid clause (iv) of the order.

7. It appears that co-accused Rakesh Jadhav is on Covid-19 emergency parole and his parole has been extended by 30 days time to time, as provided under the relevant Rule. Therefore, he is not likely to surrender in near future as long as order granting him covid-19 emergency parole is in force.

8. So far as clause (iv) of the operative part of the order/judgment dated 15th October, 2020 is concerned, in the light of discussion in foregoing paragraphs, we recall the said clause and instead of that we accept the undertaking of the petitioner that the petitioner will stay with Mr. Sanjay Adasul during the period of his furlough leave. Accordingly, the following order:-

ORDER

- A] The Petitioner be released on furlough leave for 15 days on a condition that he will stay with Mr. Sanjay Adasul at his residence as mentioned in the affidavit and will not enter into the Pune City.
- B] Since, the petitioner has undertaken not to enter into the Pune city, during the period of furlough leave, the petitioner will not be in a position to report the Chaturshrungi Police Station. In that view of the matter, the petitioner to report to the local police station nearby Ekta Colony Road, Uttamnagar, Pune, the place where the petitioner is going to stay with Mr. Sandip Adasul.
- C] The Petitioner shall report to the local police station nearby Ekta Colony Road, Uttamnagar, Pune, where the petitioner is going to stay, twice a week i.e. on Wednesday and Saturday in between 11.00 a.m. to 1.00 p.m.
- D] The Superintendent of Yerwada Central Prison, is directed to expedite the process to release the petitioner on furlough.
- E] The application is allowed to above extent and same stands disposed of.
- F] All parties to act upon an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)