

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1150 OF 2021

Shaikh Altamash Shaikh Mukthtar]
Age : 27, Occu : Asst.Teacher (B.M.C.)]
Original R/o : Pimparkhed, Tq : Chalisgaon,]
District : Jalgaon.]
(Father of the Petitioner, Sk. Muktar Gafur,]
Age : 62 yrs, Occup : Nil]
Detained at Nasik Rd. Central Prison)]..... Petitioner.

Versus

1] The State of Maharashtra,]
Through Secretary of Home,]
Mantralaya, Mumbai – 32,]
]]
2] Dy. Inspector General (Prison)]
Central Zone – Aurangabad,]
]]
3] Superintendent of Jail,]
Nasik Rd. Prison, Nasik,]
]]
(Notices to Resp. No.1-3,]
Be served through office of the,]
P.P. High Court, Judicature of Bombay)]..... Respondents.

Mr. Rupesh Jaiswal for the Petitioner.
Mr. J P Yagnik, APP for the Respondent/State

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

Reserved on : 10th March 2021
Pronounced on : 12th March 2021

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

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

2 By this Writ Petition the Petitioner seeks the following substantial reliefs :-

“(B) By issuing writ of Mandamus or any other writ; order or directions in the like nature kindly quash and set aside the order dated 11/08/2020 passed by the Dy. Inspector General (Prison) Central Zone Aurangabad. As well as direct the respondent authority to release the Petitioner on furlough OR Parole leave as per the Act; or pass an appropriate order for the purpose.

3 The present Writ Petition is filed by the son of accused who has been convicted and sentenced to undergo imprisonment for life for the offences punishable under Section 302 of the Indian Penal Code by the Judgment and order dated 30/06/1998 passed by the learned Additional Sessions Judge, Jalgaon. Being aggrieved, the convict preferred criminal appeal to this High Court Bench at Aurangabad which came to be dismissed by this Court on 12/07/2005.

4 It is submitted by the learned counsel appearing for the Petitioner that the Petitioner's father applied for furlough on the ground of sad demise of sister of the Petitioner namely Shamim Abdul Latif Shaikh who died on 28/09/2020, and the jail authority ought not to have rejected the furlough application of the father of the Petitioner, as the furlough is matter of right of

convict. It is also submitted that the order passed by the 2nd Respondent is contrary to the provision of law and against the principle of natural justice. It is also submitted that the father of the Petitioner has already completed more than 8 years sentence in the jail. The learned counsel for the Petitioner submits that earlier the father of the Petitioner got released on furlough leave in the year 2007 and there was no complaint against him. He lastly submitted that considering the present scenario of Covid-19 Pandemic, the jail authority ought to have considered the application of the Petitioner's father. He, therefore, prays that the writ petition may be allowed.

5 On the other hand the learned APP appearing for the Respondent/ State submits that the convict has been convicted for the offence punishable under Section 302 and sentenced to suffer life imprisonment. He further submitted that the reasons recorded by the 2nd Respondent in rejecting the application for furlough are based on office record, keeping in view the past conduct of the convict when he was released earlier on furlough, he had surrendered belatedly by 3949 days. He, therefore, prays that the writ petition may be rejected.

6 We have given 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 is an undisputed fact that the convict i.e. the Petitioner's father is an convict, and the learned Additional Sessions Judge, Jalgaon convicted him for the offence punishable under Section 302 and sentenced him to suffer life imprisonment. The learned APP for the Respondent/State invited our attention to impugned order passed by the 2nd Respondent. We have perused the reasons recorded in the impugned order. While rejecting the prayer of the convict to release him on furlough, the 2nd Respondent has considered the police report, which is adverse. The 2nd Respondent has also taken into consideration the police report wherein it is mentioned that the offence is registered against the convict under Section 224 of the Indian Penal Code as he was reported late when earlier he was released on furlough. It is also observed in the impugned order that if the convict is released on furlough, there could be quarrel between the convict and the prosecution witnesses. The convict is in the habit of reporting late to the jail authority as and when he was released on furlough/parole. One of the reasons given by the 2nd Respondent while rejecting the application for furlough is that, there is no recommendation from the Jail Superintendent for granting furlough to the convict. Therefore considering the past history of the convict, the 2nd Respondent has rejected the application of the convict for furlough in terms of Rule 4(4), 4(10) of the Prisons (Bombay Furlough and Parole) Rules, 1959.

8 Rule 4(4), and 4(10) which forms the basis of rejection of the application/application filed by the father of the Petitioner reads thus :-

“4 Eligibility for furlough :-

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

(1) to (3)

(4) Prisoners whose release is not recommended in Police Commissionerate area by the Assistant Commissioner of Police and elsewhere, by the Deputy Superintendent of Police on the grounds of public peace and tranquility;

(5) to (9)

(10) Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough;

(11) to (21)

9 The father of the Petitioner is a convict and convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment. He was in habit of surrendering belatedly to the Jail Authority, when he was released on furlough/parole. We, therefore, find substance in the contention raised by the learned APP that if the convict is

released on furlough, there are chances of his absconding and/or surrendering him belatedly. We are of the considered view that the reasons recorded by the the 2nd Respondent while rejecting of the convict for furlough are legally sustainable.

10 In view of the aforesaid Rules 4(4), and 4(10) of the Prisons (Bombay Furlough and Parole) Rules, 1959 and in view of the afore-stated reasons, the Petitioner's father is not eligible/entitled for the release on furlough. In the past the father of the Petitioner has committed default by way of surrendering at the appropriate time after release on furlough/parole. The 2nd Respondent is, therefore, right in holding that the convict is likely to jump furlough. The police report is also adverse to the convict.

11 For the reasons recorded aforesaid, we are not inclined to entertain the Writ Petition. There is no merit in the writ petition. Hence the writ petition stands rejected. Accordingly Rule stands discharged. The Petitioner's father may apply for furlough in future after six months.

[MANISH PITALE, J]

[S. S. SHINDE , J]