

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.57 OF 2021

Mandira
Salgaonkar

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Ravindra S/o Sukraya Bhandari	}	
(Petitioner's brother Mukesh S/o Sukraya	}	
Bhandari confined at Central Jail Nasik	}	
Road as convict No.11899)	}	
Age : 39 years, Occ : Job,	}	
R/o Room no.245, Koliwali gaon,	}	
Aadharwadi Road Jail Road,	}	
Near Mutha College, Kalyan West, Thane	}	Petitioner

Versus

- | | | |
|-----------|---|--------------------|
| 1. | The State of Maharashtra }
Through Inspector General, Prisons, Pune }
} | |
| 2. | The State of Maharashtra }
Through D.I.G. Prisons, }
Aurangabad. }
} | |
| 3. | The State of Maharashtra }
Through Superintendent Central Prison, }
Nasik Road, Central Prison, }
} | Respondents |

Mr.Rupesh Jaiswal for the Petitioner.

Mrs.S.D.Shinde, APP for the Respondent/State.

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

RESERVED ON : **20th JANUARY, 2021.**
PRONOUNCED ON : **28th JANUARY, 2021**

M.M.Salgaonkar

JUDGMENT (PER MANISH PITALE, J.)

1. The petitioner has approached this Court challenging order dated 18th March, 2019 passed by respondent No.3, whereby an application for grant of furlough leave filed by the petitioner's brother has been rejected. The appeal preferred against the said order also came to be rejected on 29th June, 2019.

2. The petitioner's brother-Mukesh S/o Sukraya Bhandari was convicted under Section 302 of the Indian Penal Code (for short, "**the IPC**") as per judgment and order passed by the Court of Additional Sessions Judge, Jalgaon and he was sentenced to suffer imprisonment for life. He applied for grant of furlough leave, claiming that he was eligible for the same as per the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, "**the Rules of 1959**") and, particularly, under Rule 4 thereof.

3. Respondent No.3 passed the impugned order dated 18th March, 2019 rejecting the application filed by convict Mukesh, only on the ground that there was a negative police report in his case. It was also recorded that as a convict for imprisonment for life, he could not claim furlough leave as a matter of right, particularly when such a negative police report was on record. Respondent No.2 referred to Rule 4(4) of the Rules of 1959 while rejecting the application.

4. Aggrieved by the said order, convict Mukesh filed an appeal before respondent No.2. By impugned order dated 29th June, 2019, respondent No.2 rejected the appeal on the same ground on which respondent No.3 had rejected the application.

5. Mr.Jaiswal, learned counsel for the petitioner, submitted before this Court that merely because there is a negative police report in case of convict Mukesh, the application could not have been rejected and respondent Nos.1 and 2 could have imposed appropriate conditions for allowing the said application. It was submitted that reference to the negative police report was made and the orders were passed by the said respondents in a mechanical manner. It was submitted that one of the relatives of the petitioner i.e. brother-in-law of the petitioner's mother has filed an affidavit before this Court stating that he resides at Neral, which is about 50 kilometers away from the Bhiwandi Police Station, where the incident had taken place. It is further submitted that the said person undertakes to ensure that convict Mukesh will attend the police station as may be directed by this Court and that he would further take care that the conduct of Mukesh will be proper during the period of release on furlough leave. On these basis, learned counsel for the petitioner, sought relief in the present writ petition.

6. Mrs.Shinde, learned APP appearing for the respondents, relied upon the negative police report and referred to Rule 4(4) of the Rules of 1959, to support the impugned orders.

7. In the present case, there is no dispute about the fact that the only reason why the application for furlough leave filed by convict Mukesh was rejected, was the adverse or negative police report. There is no doubt about the fact that Rule 4(4) of the Rules of 1959, does state that furlough leave may not be granted if there is an opinion of the police that release of such a convict would disturb public peace and tranquility but, in the present case, other than

giving a negative report, the police have not placed any material on record as to how public peace and tranquility would be disturbed if furlough leave is granted to convict Mukesh.

8. We are of the opinion that merely using the words “adverse or negative police report” cannot be made a ground for refusal of furlough leave to a convicted prisoner. The Court can certainly impose appropriate conditions, including direction to report regularly to the concerned police station, to ensure that the convicted prisoner is put to terms during the period of furlough leave. Rule 1A of the Rules of 1959 states the objectives for grant of furlough leave to convicted prisoners. The said Rule reads as under:

“1A. 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 continuity 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. Considering the laudable objective of the concept of furlough leave, we are of the opinion that the application of the convict Mukesh in the present case, ought not to have been rejected in a

mechanical manner, only on the ground of a negative police report. The convict can certainly be put to terms while granting furlough leave. Additionally, the relative of the convict has come forward to stand as surety and to ensure that the convict displays good conduct during the period of furlough leave. He has further stated that he resides about 50 kilometers away from police station Bhiwandi where the incident had taken place, thereby indicating that the convict would be away from the persons concerned with the said incident, during the period of furlough leave.

10. In view of the above, we are inclined to allow the present writ petition. Accordingly, it is allowed in the following terms :

: **ORDER** :

1. The impugned orders passed by respondent Nos.2 and 3 are quashed and set aside.

2. The application for furlough leave is granted. Consequently, the convict-Mukesh S/o Sukraya Bhandari be released on furlough for 28 days, subject to the following conditions :

(i) The uncle of the convict i.e. Shivaji S/o Damu Virale shall stand as surety in terms of Rule 6 of the Rules of 1959;

(ii) The convict shall execute a personal bond or cash security as required under Rule 10 of the Rules of 1959;

(iii) The convict shall also give declaration as per Rule 11 of the Rules of 1959.

(iv) The convict shall reside at Vanjarpada, Post Neral, Karjat alongwith Shivaji S/o Damu Virale, during his furlough leave.

(v) The convict shall attend Police Station Neral once in a week during the period of furlough leave.

(vi) The convict shall not enter the area where the complainant and witnesses resides. The authorities may impose other usual conditions, as per Rules.

11. The writ petition stands allowed in the aforestated terms.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)