

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2421 OF 2021

Salman @ Javed Shabbir Bagwan

.... Petitioner

versus

State of Maharashtra & Ors.

.... Respondents

.....

- Mr.Tanveer Khan, Advocate for Petitioner.
- Mr.J. P. Yagnik, APP for State/Respondent.

CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, JJ.

DATE : 9 DECEMBER 2021

ORAL ORDER : (PER : NITIN JAMDAR, J.)

. Rule. Rule made returnable forthwith. Taken up for disposal.

2. The Petitioner has challenged the order dated 17 March 2020 passed by the Deputy Inspector General of Prison rejecting the application of the Petitioner for release on furlough leave. The Petitioner was convicted for offences punishable under section 326, 149, 143, 148, 504 r/w 34 of the Indian Penal Code and was

sentenced to undergo imprisonment for 10 years by the learned Additional District and Sessions Judge, Shrirampur, Ahmednagar by the judgment dated 9 April 2018. The Petitioner is currently at Yerwada Central Prison, Pune.

3. When the Petitioner became eligible for furlough, the Petitioner made the application to the Deputy Inspector General of Prisons for furlough as per the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959. A report was filed by the Divisional Police Officer, Shrirampur and thereafter by the order dated 17 March 2020, the Respondent No.3 Deputy Inspector General rejected the application for furlough and also by the Respondent No.2, Additional Director General of Police and Inspector General Prisons by order dated 10 August 2020.

4. We have heard the learned counsel for the Petitioner and the learned APP.

5. The impugned orders refer to conviction and sentence imposed upon the Petitioner. Then it refers to the surety provided by the Petitioner i.e. mother of the Petitioner. The order records that the surety is competent and as per the Rules. The only reason given in the order for rejection is that the witness is of a particular religion and the Petitioner belongs to other religion and therefore there is likelihood of law and order situation as per the police report.

6. The reason that the witness and the Petitioners belong to different religion is the sole reason given in both the orders. The communication by the Sub-Divisional Officer, Shrirampur to the Respondent No.3 is on record. It only states that there is possibility of law and order situation on account of witness and the Petitioner being of different religions.

7. The learned APP has shown us a police report submitted by the Police Head Constable, Shrirampur to the Sub-Divisional Police Officer, which only reiterates the same statement. Apart from this statement alone there is nothing either on record or in the file shown to us. There is no indication whatsoever how this satisfaction is arrived. It is not stated that this area is communally sensitive or that there have instances in the past of communal riots.

8. Therefore mere fact that the Petitioner and the witnesses belong to different religion cannot be a ground to presume that this will lead to law and order situation. Such a stand unless backed by some material, need to be deprecated. Therefore this reason being only foundation of the impugned order and it being arrived at without basis whatsoever, the impugned order will have to be set aside.

9. The impugned orders dated 17 March 2020 and 10 August 2020 are quashed and set aside. The Petitioner is entitled to be released on furlough leave for the maximum period as provided under the Rules. As regards the condition to be imposed, the Petitioner will not coerce or threaten the witness and report to the concerned police station once a week on dates specified by the authorities.

10. The authority shall issue a formal order in this regard within a period of one week from the date the order is uploaded and communicate the same to the Petitioner and also to the mother of the Petitioner who would prepare the papers for furnishing surety.

11. Rule made absolute in above terms. The Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)