

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

CRIMINAL WRIT PETITION NO.2420 OF 2021

Santosh Basavraj Gaikwad

.... Petitioner

versus

State of Maharashtra

.... Respondent

.....

- Mr.Abdul Hafeez Kotawala, Advocate appointed through Legal Aid Services for Petitioner.
- Mr.K. V. Saste, Addl. Public Prosecutor for State/Respondent.

**CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, J.**

DATE : 2 DECEMBER 2021

P.C. :

1. This is a Writ Petition on a letter received through jail.

2. Heard learned counsel for the Petitioner appointed through Legal Aid and the learned Additional Public Prosecutor. Taken up for disposal.

3. The Petitioner has challenged the order dated 10/02/2020 passed by the Deputy Inspector General of Prisons rejecting the application filed by the Petitioner for regular parole.

4. The Respondent rejected the application of the Petitioner for parole on the ground that if the Petitioner is released on parole, there is likelihood of law and order situation and in light of Rule 4(4) of the Maharashtra Prison (Mumbai Furlough and Parole) Rules, 1959, the application cannot be considered. It is also stated that as per the police report, the surety will not be able to control the Petitioner if he is released. Another ground is that the Petitioner cannot be released as per Rule 3, as he is convicted for offence punishable under section 302 of the Indian Penal Code and is sentenced to undergo imprisonment for life.

5. The Petitioner falls in category of (C)1 and Rule 3, which states that if the prisoner sentenced to imprisonment for a period exceeding 14 years, shall become eligible for furlough after 3 years of actual imprisonment. There is no dispute before us that the Petitioner is covered by Rule 3(C)1 and he has completed 3 years.

6. Now we turn to the grounds given in the impugned order for rejection. The Rule 4 specifies certain categories who are not eligible for furlough leave. Rule 4(4) which is referred to in the impugned order reads thus;

“Rule 4. - Eligibility of furlough

(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;

The Division Bench of this Court in the case of *Sharad Keshav Mehta Vs. State of Maharashtra and others*¹, in identical facts has held in paragraph No.3 as under;

“It hardly requires to be stated that it is not the sweet will of the Commissioner of Police which can be the basis for coming to the conclusion that release of the prisoner on furlough would lead to disturbance of public peace and tranquility. Unless the Commissioner of Police has material from which a reasonable inference can be drawn, the right to release on furlough cannot be deprived by resort to R.4. In the present case, the prisoner was convicted for committing murder of his wife and it surpasses our imagination as to how the release of such person is likely to disturb public peace and tranquility. The Commissioner of Police must apply his mind to the facts of each case and should not as a formality submit a report denying the substantial and legal right of the prisoner. In our judgment, as the State Government has failed to point out any material to indicate that the release of the prisoner on furlough would disturb public peace and tranquility, the rejection of the application is misconceived.”

Therefore to the facts of the case application of mind on the part of the authority is needed if the application to be rejected under this ground. The learned APP has placed before us the report received by the office of the Public Prosecutor dated 23 September 2020.

1 1989 Cri.L.J. 681

7. The impugned order and the Police report which is shown to us, refers to the likelihood of breach of law and order in general terms. The Report and the impugned order refers to the crime as serious crime of murder. However that by itself is of no significance in light of Rule 3(C)(1), where a prisoner, sentenced to imprisonment for a period exceeding 14 years, is eligible for furlough on completion of 3 years of actual imprisonment. This would include the sentence imposed for committing a murder.

8. The learned counsel for the Petitioner has placed before us copy of the judgment and order dated 15 December 2018 of the Sessions Court, Solapur, by which the Petitioner was convicted. We have perused the judgment to ascertain the nature of crime. The facts are that the Petitioner was married. His wife filed FIR on 5 May 2016 that after a quarrel the Petitioner had poured kerosene on her and set her on fire. Initially offence under section 307 of the Indian Penal Code was registered. After the wife of Petitioner succumbed to injury, offence under section 302 of the Code was added. Perusal of this judgment shows that the facts in the case are identical to many other unfortunate cases that come before this Court of crimes of this nature out of marital relations gone wrong. The ground that the Petitioner cannot be controlled also does not take into consideration that the Petitioner has offered surety of his brother. There is no discussion for the conclusion that the Petitioner's release will affect

law and order and we also find is only a use of phrases without examining the facts of the case. Because the complainants have opposed the release of Petitioner on furlough, by itself cannot be a ground for totally rejecting the application as this apprehension could be taken care by imposing conditions. Therefore what we have before us, is total non-application of mind to the facts of this particular case by the authority while rejecting the application for furlough. The authority is to enjoined to consider the facts of each case and cannot resort to make general statements.

9. Accordingly the impugned order dated 10 August 2020 is quashed and set aside. The application of Petitioner for furlough leave is restored before the concerned authority. The concerned authority shall take a fresh decision after examining all facts in light of what is stated above, within a period of four weeks and communicate the same to the Petitioner.

10. Writ Petition is disposed of in above terms.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)