

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

CRIMINAL WRIT PETITION NO. 2638 OF 2021

Sandip s/o. Bahirunath Thopte ,
Age- 40 Years R/o. Mahatma Phule
Agricultural University Rahuri Thopte mess,
Tq.Rahuri District Ahmednagar
(Presently lodged at Nashik Central Prison
as Convict Prisoner No.C/18571)

...Petitioner

vs.

1. The Addl. Director General of Police &
Inspector General of Prisons, Pune & Ors.

2. The Deputy Inspector General of Prisons
Western Region, Pune-6

3. The Superintendent,
Nashik Central Prison, Nashik Road.

...Respondents

Ms.Sharda P. Chate for Petitioner.p

Mrs.S.D. Shinde, APP for State.

**CORAM : S.S. SHINDE &
N.J. JAMADAR, JJ.
DATE : 17 AUGUST 2021**

ORAL JUDGMENT (PER N. J. JAMADAR, J.) :

1. Rule, Rule made returnable forthwith. By consent of parties, the petition is taken up for final hearing.
2. The challenge in this petition is to the order dated 4th April 2021, passed by the Deputy Inspector of Prisons, Western Division, Pune, whereby the application of the Petitioner came to be rejected.

3. The petition arises in the backdrop of the following facts :

The Petitioner came to be convicted in Sessions Case No.411/2016 for the offences punishable under Sections 120(B) and 302 of Indian Penal Code, 1860 ('the Penal Code') and was sentenced to suffer imprisonment for life for the major offence. The Petitioner's application for furlough came to be rejected on the ground that the first informant and the victim are residing in the same village in the Srirampur Taluka, and there is a strong possibility of breach of peace and tranquility and imminent threat to the safety of the informant and the witnesses, in the event the Petitioner is released on furlough. Thus, invoking Rule 4(4) of the Prison (Bombay Furlough and Parole) Rules, 1959 ('Rules, 1959'), the competent authority rejected the application. Being aggrieved, the Petitioner has invoked the writ jurisdiction of this court.

4. We have heard Ms.Chate, the learned Counsel for the Petitioner and Mrs. S.D. Shinde, the learned APP for the State.

5. The learned Counsel for the Petitioner submitted that the application of the Petitioner came to be rejected by ascribing reason of likelihood of breach of peace and tranquility without there being any

material to substantiate the said apprehension. It was submitted that the apprehension expressed by the authorities is not at all borne out by the conduct and antecedents of the Petitioner. In order to lend support to the submission that the applications for release on parole and furlough should not be rejected on the ground of breach of peace and tranquility and threat to the first informant and witnesses, in a routine manner, learned Counsel for the Petitioner placed reliance on the Division Bench judgment of this court in the case of *Sanjay Kisan Kadse vs. State of Maharashtra*¹.

6. In opposition to this, learned APP assailed the tenability of the Petition on the ground that the Petitioner has already invoked the statutory remedy of appeal against the impugned order and the said appeal is pending before the appellate authority. It was further submitted that the apprehension entertained by the authorities about the breach of public peace and tranquility and threat to the first informant and witnesses cannot be said to be unfounded.

7. On the perusal of the impugned order, it becomes evident that the claim of the Petitioner is negated on the basis of adverse report submitted by the police. Apparently the said apprehension stems from the fact that the person, who has volunteered to stand as a surety for the Petitioner, and the informant and the witnesses are residents of the same village. Thus, the possibility of untoward incident resulting in harm to the informant and the

1 2004(1) Bom.C.R.(Cri.) 758

witnesses cannot be ruled out.

8. Faced with the aforesaid situation, learned Counsel for the Petitioner submitted that the Petitioner would stay at a place which is at a considerable distance from the village where the informant and witnesses are residing. Learned Counsel for the Petitioner submitted that the Petitioner would also furnish a surety who undertakes to take responsibility of the Petitioner.

9. Undoubtedly, sub-rule (4) of Rule 4 of Rules, 1959 precludes the release of a prisoner on furlough, whose release is not recommended by the competent Police Officer or District Magistrate, as the case may be, on the ground of public peace and tranquility. However, such adverse recommendation cannot be resorted to as a ritualistic formula to deprive the prisoner of legitimate privilege of being released on furlough. It is imperative to consider whether the adverse recommendation is supported by relevant material which justifies such apprehension. In the absence thereof, the denial of furlough on the ground of adverse report, which is nothing but mere *ipse dixit* of the concerned authority, would be an arbitrary and unreasonable exercise of the authority. Likewise, resistance to release the prisoner on the count that there is a likelihood of harm to the informant, witnesses or the relations of the victim, cannot be pressed into service in routine manner. Such apprehension must be borne out by the

material and the attendant circumstances.

10. In the case at hand, we do not find that the adverse recommendation is backed by material which justifies such stand of the authorities. Denial of furlough on the said count, in the circumstances of the case, appears unjustifiable. In any event, the apprehension on the part of the authorities can be taken care of by imposing a condition that the Petitioner, upon release on furlough, would stay at a place which is 25 kms away from the boundaries of Srirampur Taluka in which the first informant and the witnesses ordinarily reside.

11. As regards the objection to the maintainability of the petition, it may be apposite to note that the report submitted by the Superintendent, Prison, indicates that the appeal was preferred by the Petitioner on 19th May 2021 and it was forwarded to the appellate authority on 1st June 2021. Having regard to the time lag, we do not find ourselves constrained to entertain this petition on the score that the Petitioner preferred an appeal.

12. Hence, the following order :

ORDER

- (i) The petition stands partly allowed.
- (ii) Respondent No.2 shall pass an order of releasing the Petitioner on furlough for a period of fourteen days on usual

terms, subject to the following conditions :

- (a) The Petitioner, upon his release on furlough, shall reside at a place which is at a distance of 25 kms. from the revenue boundaries of Srirampur Taluka.
 - (b) The Petitioner shall furnish a surety, who is an ordinary resident of the area outside the aforesaid limit, and where the Petitioner proposes to stay, after his release on furlough.
 - (c) The said surety shall undertake to control the activities of the Petitioner during the period of release on furlough.
- (iii) In order to obviate the possibility of conflicting decisions, the appeal preferred by the Petitioner against the impugned order stands disposed of.

Rule is made absolute in the aforesaid terms.

All concerned to act on an authenticated copy of this judgment.

(N.J. JAMADAR J.)

(S.S. SHINDE, J.)