

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2669 OF 2021**

Mirgappa Dattu Mane,
Aged 72 years, Occ : Farming,
Father of Convict
Tanaji Mirgappa Mane,
Residing at Municipal Post Sulewadi,
Taluka Malshiras, Sulewadi,
Solapur 413 310, Maharashtra,
and his son, presently lodged at
Nashik Central Prison, Nashik,
(Prisoner No.C-12656) Petitioner

Versus

1. The State of Maharashtra
Through the office of Public Prosecutor,
High Court, Bombay.
2. The Inspector General of Prison,
Western Zone, Pune – 411 001.
3. The Deputy Inspector General of Prison,
Maharashtra State, Pune.
4. The Jail Superintendent,
Nashik Central Prison,
Nashik.
5. The Jail Superintendent,
Yerwada Central Prison, Pune.
6. The Senior Inspector of Police,
Malshiras Police Station,
Malshiras, Dist. Solapur.Respondents

Ms. Harjeet Kaur for petitioner.
Mr. V.B. Kondedeshmukh, APP for State.

CORAM : S. S. SHINDE &

N.J. JAMADAR, JJ.

Reserved for Judgment on : 26th August 2021.

Judgment pronounced on : 16th September 2021.

JUDGMENT : (PER N.J. JAMADAR)

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

2. The petitioner, who is the father of convict-Tanaji Mirgappa Mane, has preferred this petition assailing the legality and correctness of the order dated 28th May 2021 passed by respondent No.2 in Furlough Appeal No.23/21/2921/2021, dated 28th May 2021, whereby the appeal preferred by the convict came to be dismissed affirming the order dated 9th December 2020 passed by respondent No.3, rejecting the application of the convict for furlough by invoking Rule 4(4) of Prisons (Bombay Furlough and Parole) Rules, 1959 ('Rules, 1959').

3. The background facts leading to this petition can be summarized as under :

(a) The convict came to be convicted along with four co-accused in Sessions Case No. 30 of 2016 for the offences punishable under sections 302, 341, 143, 147, 148 and 149 of the Indian Penal Code, 1860 ('the

Penal Code') and sentenced to suffer imprisonment for life for the major offence. As of 30th June 2021, the convict has undergone 5 years and 8 days of actual imprisonment.

(b) In the year 2019, the convict was released on furlough. On 15th September 2019, while the convict was on furlough, a non-cognizable offence was registered against the convict vide N.C.R.No. 629/2019 for the offence punishable under section 507 of the Penal Code.

(c) In the year 2020, the convict again applied for furlough leave. By order dated 9th December 2020, the Deputy Inspector General of Prison, Western Division, Yerwada, Pune was persuaded to reject the application of the convict on the premise that the Deputy Superintendent of Police had not recommended the release of the convict on the ground of the strong possibility of breach of public peace and tranquility. It was, *inter-alia*, noted that on the previous occasion, when the convict was released on furlough, above-numbered NC was registered against

the convict, and that two other crimes namely C.R. No.379/2015 and C.R. No. 161/2016 were registered against the convict at Mhaswad and Malshrias Police Stations, respectively.

(d) The appeal preferred by the convict being Appeal No. 23/21/2921/2021 did not succeed. By the impugned order dated 28th May 2021, the Additional Director General of Police and Inspector General of Prisons affirmed the order passed by Deputy Inspector General of Prisons and dismissed the appeal. Being aggrieved, the convict has invoked the writ jurisdiction of this Court.

4. We have heard Ms. Harjeet Kaur, the learned counsel for the petitioner and Mr. V.B. Kondedeshmukh, the learned APP at some length. With the assistance of the learned counsels for the parties, we have perused the material on record including the report dated 30th July 2021 submitted by the Superintendent, Nashikroad Central Prison to which the chart indicating the details of incarceration of the convict is annexed.

5. Ms.Harjeet Kaur, the learned counsel for the petitioner

submitted that the impugned order suffers from the vice of non-application of mind. The authorities fell in error in declining the benefit of furlough for the reason that a non-cognizable offence was registered against the convict when he was released on furlough on the previous occasion. The circumstances in which the non-cognizable case came to be registered against the convict, were not at all adverted to by the authorities. Denial of furlough on the ground that the Deputy Superintendent of Police has not recommended the release of the convict is wholly arbitrary and unreasonable, especially in the absence of any material to justify the apprehension on the part of the authorities that the release of the convict would be prejudicial to the maintenance of public peace and tranquility. Attention of the Court was invited to the fact that the person, whose claim for right of way through the land of the petitioner and convict has been rejected by the competent Revenue Officer, has filed the criminal proceedings to wreck vengeance. Thus, the denial of the benefit for furlough, to which the convict is otherwise legitimately entitled to, is wholly unsustainable, submitted Ms. Kaur.

6. In opposition to this, Mr. Kondedeshmukh, the learned APP endeavoured to support the impugned orders. It was submitted

that, in the backdrop of the pendency of the crimes against the convict and the fact that the convict indulged in criminal activities when he was released on furlough on the previous occasion, the apprehension entertained by the authorities cannot be said to be unfounded. The authorities were thus within their rights in refusing to release the convict on furlough, canvassed Mr. Kondedeshmukh.

7. From the perusal of the impugned orders, it becomes evident that the authorities have sought to ascribe multiple reasons for refusal of furlough. First and foremost, the adverse report of the concerned Deputy Superintendent of Police that the release of the convict on furlough may pose a threat to life of the first informant and the witnesses and may also lead to law and order problem. This seems to be the principal reason for rejection of the prayer. The authorities have thus invoked sub-rule (4) of Rule 4. Second, the registration of NC Case No. 629 of 2019 on 15th September 2019, whilst the convict was on furlough leave, in the year 2019. And third, the registration of two crimes, being C.R. No. 379/2015 at Mhaswad Police Station and C.R. No. 161/2016 at Malshiras Police Station against the convict.

8. To begin with, the registration of C.R. No. 379/2015 and

161/2016 could not have been taken into account by the authorities to deprive the convict of the benefit of furlough for reasons more than one. Firstly, those crimes were registered against the convict even before the convict came to be convicted in Sessions Case No. 30 of 2016 by judgment and order dated 12th January 2018. Secondly, the convict was released on furlough in the year 2019, when those crimes were to the credit of the convict. The registration of those crimes, even before the conviction of the convict, thus does not reflect upon the conduct of the convict which bears upon his entitlement to be released on furlough.

9. We find considerable force in the submission of Ms. Kaur that registration of non-cognizable case under sections 504 and 506 of the Penal Code could not have been given importance which the authorities were persuaded to attach to it. Copies of the intimation of the decision in Rasta/SR/09/2018 passed by Tahasildar, Malshiras reveals that the claim of Vajjnath Dattu Mane for right of way over the land of the petitioner and the convict came to be rejected. The said Vajjnath Mane filed a private complaint before the learned Magistrate, Malshiras, being Criminal M.A. No. 541/2019 which is pending for verification by the complainant therein.

10. Even if we provide maximum latitude to the claim of the authorities that non-cognizable case No.629/2019 was registered against the convict whilst he was on furlough in the year 2019, yet, we are afraid to accede to the submission on behalf of the respondents that an offence punishable under section 507 of the Penal Code has the propensity to result in breach of public peace and tranquility.

11. Sub-rule (4) of Rule 4 of Rules, 1959 reads as under :

“4. Eligibility for furlough :

All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for 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.”

12. From the text of Rule 4, sub-rule (4), it becomes abundantly clear that it renders a prisoner ineligible for furlough if the Deputy Superintendent of Police does not recommend his release on the grounds of public peace and tranquility. It is trite that the concept of “public peace and tranquility” is quite distinct from ordinary law and order problem. In the instant case, the authorities have, in terms, recorded that the Deputy Superintendent of Police did not

recommend the release of the convict on the ground that it may lead to law and order issue. The authorities have thus not recorded a categorical satisfaction that the release of the convict would result in disturbance of public peace and tranquility.

13. By a catena of decisions, this Court has repeatedly held that adverse recommendation of the Assistant Commissioner of Police or Deputy Superintendent of Police, as the case may be, cannot be pressed into service as a ritualistic formula to deprive the prisoner of the benefit of furlough. Such a recommendation ought to be based on cogent material. In the absence of material which would lend support to the adverse recommendation, such recommendation would assume the character of a mere *ipse dixit* of the authorities.

14. A profitable reference in this context can be made to a Division Bench Judgment of this Court in the case of ***Sanjay Kisan Kadse vs State Of Maharashtra And Ors.***¹, wherein this Court frowned upon the practice of rejecting the applications by ascribing *non-est* reasons. Paragraph Nos. 6 and 7 of the said judgment read as under :

“6 It is unfortunate that in many matters, the competent Authorities have passed orders rejecting applications of prisoners for furlough leave on the grounds

1 2004 (1) Bom C R 758

which are non est. This court as well as other High Courts from time to time have issued various directions in this regard and also categorically observed about the material, which would be required to be considered by the competent Authorities while considering the applications for grant or refusal of furlough leave. Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 clearly denotes contingencies in which furlough leave of the prisoner can be refused. Similarly, the competent Authorities are also required to consider the law laid down by the High Courts and the Apex Court in this regard and after such consideration, the competent Authorities are expected to pass orders one way or the other, which are sustainable in law.

7. *Similarly, in many matters, it is noticed by us that the orders passed by the competent Authorities rejecting the applications for furlough leave are in a very casual manner completely ignoring the provisions of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 and, therefore, the orders demonstrated total non-application of mind on the part of the competent Authorities and rendered them invalid in law. In many matters, the competent Authorities rejected the applications for furlough leave in the routine manner only on the basis of adverse Police reports, which are submitted on the basis of statements of witnesses of the opposite side and, therefore, as we have already observed hereinabove, such orders cannot be sustained. The competent Authorities, who are entrusted with the powers of grant or refusal of furlough leave, which is the right of the prisoner, are expected to apply their mind to the facts and circumstances of the case keeping in view the contingencies mentioned in Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 and only thereafter, should express their opinion in this regard. Similarly, mere observations in the Police report that there is a likelihood of breach of peace if prisoner is released on furlough leave should not be the formal expression only to deprive the prisoner from availing the furlough leave. The Police Authorities should be in a position to substantiate their opinion by giving valid reasons for the same. We expect that in future all these factors will be kept in mind by the competent Authorities while considering the applications for grant or refusal of furlough leave.*

(emphasis supplied)

15. On the aforesaid touchstone, re-adverting to the facts of the

case, it becomes abundantly clear that the authorities rejected the prayer of the convict to release him on furlough without properly appreciating the nature of the material arrayed against the convict. There was no justifiable ground to arrive at the conclusion that the release of the convict on furlough would endanger public peace and tranquility. Invocation of sub-rule (4) of Rule 4 of Rules, 1959, in the facts of the case, appeared to be unjustifiable. We are, thus, inclined to allow the petition.

16. Hence, the following order :

O R D E R

- (a) The petition stands allowed.
- (b) The impugned orders dated 28th May 2021 and 9th December 2020 stand quashed and set aside.
- (c) Respondents No.3-The Deputy Inspector General of Prison, Western Division, Pune is directed to release the convict-Tanaji Mirgappa Mane on furlough for a period of 14 days on such terms and conditions as may be found suitable in the facts of the case.
- (d) The convict shall abide by all the conditions

which may be imposed by respondent No.3-The Deputy Inspector General of Prison, Western Division, Pune.

(e) The convict shall not contact the first informant and witnesses in C.R. No.159/2016 in any manner whatsoever.

(f) The convict shall maintain peace and be of good behaviour during the period of his release on furlough.

Rule made absolute in the aforesaid terms.

[N.J. JAMADAR, J.]

[S.S. SHINDE, J.]