

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

WRIT PETITION NO. 2713 OF 2021

Omnanarayan Amarnath Sharma
Aged : 32 years, Occu. : Nil
Convict No.C-6310
Residing at Near Shiv Shakti Flour Mill,
Indira Nagar, Rupadevi Pada No.2,
Road No.33-34, Wagle Estate, Thane,
Maharashtra,
At present a convict prisoner and lodged
at Central Jail, Thane.

...Petitioner

Versus

1. The State of Maharashtra
Through the Superintendent,
Central Jail, Thane.
2. The Inspector General of Police (Prison)
South Zone, Byculla, Mumbai – 8.

...Respondents

Mr. Sandeep Kumar Singh, for the Petitioner.
Mrs. M. H. Mhatre, APP for the State/Respondent.

**CORAM: S. S. SHINDE &
N. J. JAMADAR, JJ.**

**RESERVED ON: 28th SEPTEMBER, 2021.
PRONOUNCED ON: 6th OCTOBER, 2021.**

JUDGMENT:- [PER : N. J. JAMADAR, J.]

1. Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally.
2. The challenge in this petition is to an order dated 10th May, 2021 passed by the Special Inspector General (Prison), South

Division, Byculla, Mumbai, whereby the application of the petitioner for release on furlough came to be rejected.

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

(a) The petitioner came to be convicted by the Court of Sessions, Thane, for the offence punishable under Section 302 of the Indian Penal Code, 1860 ("the Penal Code") for having committed murder of his wife and sentenced to suffer imprisonment for life, by judgment and order dated 2nd March, 2017. The petitioner has undergone imprisonment for more than five years. The petitioner thus preferred an application for release on furlough. The father of the petitioner offered to furnish surety.

(b) The prayer of the petitioner was initially not acceded to on the ground that the father of the petitioner was not in a position to exercise effective control over the petitioner. Thereupon, Mr. Imran Ismail Shaikh volunteered to furnish surety. However, upon inquiry, Mr. Imram Shaikh backed out. Thus, by communication dated 23rd August, 2020, the petitioner was called upon to furnish a respectable person like Sarpanch, Police Patil, Councilor, Doctor and Teacher etc., as surety. Citing the long period of incarceration, the petitioner expressed

his inability to furnish surety of the type sought by the authorities.

(c) Eventually, by the impugned order dated 10th May, 2021, the competent authority negated the prayer of the petitioner invoking Rule 4(4) and (6) of the Maharashtra Prisons (Furlough and Parole) Rules, 1959 ("the Rules, 1959"). The competent authority took note of the fact that the brother of the deceased wife of the petitioner, namely Mr. Mukesh Matadin Kahar, had expressed apprehension about threat to his life, in the event of the release of the petitioner on furlough.

4. We have heard Mr. Sandeep Kumar Singh, the learned Counsel for the petitioner and Mrs. Mhatre, the learned APP, for the State/respondent. With the assistance of the Counsels for the parties we have perused material on record including the impugned order and the report submitted by the Superintendent, Central Prison, Thane.

5. The learned Counsel for the petitioner submitted that respondent no.2 committed an error in rejecting the application of the petitioner for furlough on the ground that no surety, who happened to be a respectable person, could be furnished. Mr. Singh strenuously urged that the father of the petitioner had offered to stand as a surety. The insistence to furnish a

surety, who happens to be either an official or an elective office bearer is not legally sustainable. Amplifying the submission, Mr. Singh would urge that such a condition would defeat the object of the correctional measure as the prisoner would find it difficult to furnish a surety who satisfies the aforesaid criteria.

6. Mrs. Mhatre, the learned APP, on the other hand, would urge that respondent no.2 was fully justified in negating the prayer for release on furlough as the possibility of the petitioner not reporting back to prison, in the absence of a surety, who would exercise effective control, was imminent. Since the father of the petitioner resides in a premises which is unauthorisedly erected, there was risk of fleeing away, submitted Mrs. Mhatre.

7. Mrs. Mhatre further submitted that the petitioner has an efficacious remedy of approaching the appellate authority under Rule 2(3) of the Rules, 1959. Therefore, this Court may not entertain the petition.

8. We have given careful consideration to the aforesaid submissions. From the perusal of the material on record it becomes evident that the competent authority delved into the issue of suitability of the surety, primarily. Initially, the father of the petitioner offered to stand surety. However, his proposed suretyship was not accepted on the count that he would not be

able to exercise effective control over the petitioner. The efforts made by and on behalf of the petitioner to furnish an independent surety did not yield success as Mr. Imran Shaikh, who had offered to furnish surety, backed out. Vide communication dated 13th August, 2020, the competent authority requested the Superintendent, Central Prison, Thane, to advise the petitioner to furnish a competent and eligible surety, who happened to be a respectable person like Sarpanch, Police Patil, Councilor, Doctor and Teacher etc.

9. The aforesaid communication dated 13th August, 2020, thus indicates that the competent authority was of the view that the petitioner was entitled to be released on furlough provided a suitable and competent surety was furnished. When the petitioner expressed his inability to furnish the surety of the type desired by the competent authority, the latter proceeded to reject the application invoking Rule 4(4) and (6) of the Rules, 1959. Support was sought to be drawn from the apprehension expressed by the Assistant Commissioner of Police on the basis of the statement of Mr. Mukesh Kahar, the brother of the deceased wife of the petitioner, that the petitioner may cause harm to the said witness.

10. It is interesting to note that the consideration upto the point of the rejection of the prayer for furlough revolved around the suitability of surety and not the entitlement of the petitioner to be released on furlough. In our view, having recorded in black and white that the petitioner be advised to furnish a surety who happened to be a respectable person, it was not open for respondent no.2 to reject the application for furlough itself by invoking Sub-rule (4) and (6) of Rule 4, of the Rules, 1959.

11. Even otherwise, we do not find that the reliance on Sub-rule (4) and (6) of Rule 4 is sustainable in the facts of the case. There is no cogent material to show that the release of the petitioner on furlough would pose danger to public peace and tranquility. In any event, the apprehension could have been taken care of by imposing appropriate conditions.

12. The petitioner has placed on record the affidavits of his brother Udit Sharma and Amarnath Sharm, his father, to the effect that they undertook to produce the petitioner before the authorities, in the event he is released on furlough. Udit Sharma claimed that he deals in the business of real estate and earns Rs.40,000/- per month and pays income tax regularly. Udit Sharma is the younger brother of the petitioner.

13. In the aforesaid view of the matter, where the competent authority was inclined to release the petitioner on furlough provided a suitable surety was furnished, in our view, the rejection of the prayer for release on furlough subsequently by invoking Sub-rule (4) and (6) of Rule 4 is not justifiable. In the circumstances, we do not deem it appropriate to relegate the petitioner to the remedy of appeal before the appellate authority. In our view, the concern of the authorities can be adequately addressed by directing the petitioner to furnish an independent surety, apart from Udit Amarnath Sharma, as an additional surety. We are, thus, inclined to allow the petition.

14. Hence the following order:

: O r d e r :

- (i) The petition stands allowed.
- (ii) The impugned order dated 10th May, 2021 passed by the Special Inspector General (Prison), South Division, Byculla, Mumbai, stands quashed and set aside.
- (iii) The petitioner – convict Omnarayan Amarnath Sharma be released on furlough for a period of 14 days on furnishing two sureties, one of whom shall be Udit Amarnath Sharma, the brother of the petitioner, and another independent person having good conduct, in the sum of Rs.15,000/-, each.

- (iv) In addition to the conditions which may be imposed by the competent authority – respondent no.2, the petitioner shall attend the Wagle Estate Police Station, Thane, twice during the aforesaid period of 14 days, to mark his presence, in between 10.00 am. to 12.00 noon.
- (v) The petitioner shall not contact the witness Mukesh Kahar or any of his family members for any purpose whatsoever.
- (vi) Necessary order of release of the petitioner on furlough be passed by 18th October, 2021.
- (vii) All concerned shall act on an authenticated copy of this judgment and order.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]