

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

CRIMINAL WRIT PETITION NO. 3012 OF 2021

Meghnath Gurunath Travadan @ Pille

Age - 42 years, Occu. : Plumbing,

R/at – Gairan Vasti, Keshav Nagar,

Mudhwa, Pune,

At present, Yerwada Central Prison, Pune

.... Petitioner

Versus

1. Director General of Police (Prison),
Maharashtra State, Pune-1,
Old Central Building, 2nd Floor, Pune

2. Superintendent of Police (Prison),
Western Division, Yerwada, Pune-6,

3. Asst. Police Commissioner,
Wanawadi Division, Pune City.

4. The State of Maharashtra

.... Respondents

Mr. Priyal G. Sarda for petitioner.

Mr. K.V. Saste, APP for respondents.

CORAM : S. S. SHINDE &

N.J. JAMADAR, JJ.

Reserved for Judgment on : 16th September 2021.

Judgment Pronounced on : 21st September 2021.

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

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

2. The petitioner, who is convicted for the offences punishable

under sections 302 and 201 read with 34 of the Indian Penal Code, 1860 ('the Penal Code') and sentenced to suffer imprisonment for life for the major offence, takes exception to the order dated 4th June 2021 passed by respondent No.1-Inspector General of Prisons, whereby the Appeal No.3041/2021 preferred by the petitioner came to be dismissed, affirming the order dated 28th September 2020 passed by Deputy Inspector General of Prisons, Western Division, Pune rejecting the application of the petitioner for furlough.

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

(a) The petitioner came to be convicted for the offences punishable under sections 302 and 201 read with 34 of the Penal Code in Sessions Case No.768 of 2011 by the learned Sessions Judge, by judgment and order dated 16th December 2016, and has since been incarcerated. The petitioner preferred an application for release on furlough.

(b) By an order dated 28th September 2020, the Deputy Inspector General, Prisons rejected the application of the petitioner on the ground that the

Assistant Commissioner of Police, Pune has made an adverse recommendation. It was further noted that two other crimes were registered against the petitioner, being C.R.No. 45/2010 for the offences punishable under sections 394, 427, 504 and read with 34 of the Penal Code and C.R. No. 88/2014 for the offences punishable under section 326, 504 read with 34 of the Penal Code.

(c) Appeal preferred by the petitioner against the aforesaid order was dismissed by the respondent No.1, concurring with the view taken by the Deputy Inspector General of Police. In addition, the respondent No.1 took note of the fact that on 13th April 2020 the petitioner had indulged in activities which were subversive of prison discipline. The petitioner had allegedly assaulted co-inmate Sahil Kalsekar, in connection with which a show-cause notice was issued to the petitioner by the Prison Administration. Thus, the prayer of the petitioner to release him on furlough came to be rejected.

4. We have heard Mr. Priyal Sarda, the learned counsel for the petitioner and Mr.K.V. Saste, the learned APP for the State. With the assistance of the learned counsels, we have perused the material on record including the impugned orders. As the respondent No.1 had also taken into account the fact that a show-cause notice was issued to the petitioner in respect of the alleged incident dated 13th April 2020, we had called upon the respondents to place on record the relevant material. On 15th September 2021, a report came to be submitted to the effect that on the day of the said occurrence, the petitioner was given a verbal warning and a decision as regards the action on the basis of the show-cause notice dated 27th April 2020 would be taken soon.

5. Mr. Sarda, the learned counsel for the petitioner strenuously urged that the authorities have fallen in error in taking into account irrelevant material. The authorities could not have banked upon the above-numbered two crimes to deny the benefit of furlough as the petitioner has been duly acquitted in the proceedings arising out of the above-numbered crimes. The rejection of the prayer of the petitioner on the count that the Assistant Commissioner of Police gave an adverse report is also legally unsustainable, urged Mr. Sarda. Apart from a bald assertion

that the jurisdictional police was of the view that the petitioner may not surrender in the event of his release on furlough, there is no material which would justify the apprehension on the part of the concerned authority.

6. In opposition to this, Mr. Saste, the learned APP, endeavoured to support the impugned orders. It was urged that the conduct of the prisoner during the period of incarceration is of vital importance. Since there is material to indicate that the petitioner had indulged in indiscipline, warranting the issuance of a show-cause notice, the authorities were justified in declining to release the petitioner on furlough, submitted Mr. Saste.

7. We have given our anxious consideration to the rival submissions. The primary ground for rejection of the prayer of release on furlough is the adverse recommendation by the jurisdictional police. In fact, in the order passed by the Deputy Inspector General of Police on 28th September 2020, the only ground for rejection was the adverse recommendation and, thus, rejection was sought to be justified by invoking sub-rule (4), Rule 4 of Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 ('the Rules, 1959'). Sub-rule (4) of Rule 4 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.”

8. On a plain construction, under sub-rule(4) of Rule 4, furlough can be refused when the same is not recommended by the Assistant Commissioner of Police, in the Commissionerate area. The aforesaid rule is required to be construed in a pragmatic and purposive manner. A decision not to extend the benefit of furlough deserves to be tested in the context of its reasonableness as well as on the touchstone of the philosophy which pervades the release of prisoners on furlough and parole. Mere formal compliance with the statutory provisions in the sense that the jurisdictional police has not recommended the release or expressed an apprehension that the convict would not surrender, would militate against the objective of correctional therapy. Such an adverse recommendation must have justifiable basis to sustain it.

9. A useful reference can be made to a Division Bench judgment in the case of ***Sanjay Kisan Kadse Vs. State of Maharashtra***¹, wherein this Court frowned upon the practice of rejecting the

¹ 2004(1) Mh.L.J. 789

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 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)

10. In the light of the aforesaid exposition of law, re-adverting to the facts of the case, from the perusal of the report of the Senior Police Inspector, Mundhwa Police Station, Pune, it becomes evident that the jurisdictional police has expressed a mere apprehension that the petitioner may not surrender in the event he is released on furlough as the mother of the petitioner, who proposed to stand surety, may not exercise effective control over the petitioner. Undoubtedly, the Senior Inspector of Police, Mundhwa Police Station, Pune referred to C. R. Nos. 45/2010 and 88/2014 registered against the petitioner with Mundhwa Police Station. However, the report is conspicuously silent on the crucial aspect that the release of the petitioner on furlough, may lead to disturbance of public peace and tranquility. Nor there is any apprehension that the release of the petitioner would pose risk to the informant or the witnesses in the Sessions Case No.768 of 2011, in which the petitioner came to be convicted.

11. To add to this, the petitioner came to be acquitted in Regular

Criminal Case No. 928 of 2010 arising out of C.R. No.45/2010 by judgment and order dated 12th September 2018 and in Sessions Case No. 694 of 2014 arising out of C.R. No.88/2014 by judgment and order dated 15th June 2015. Thus, the registration of these two crimes could not have been arrayed against the petitioner.

12. The situation which thus obtains is that apart from the *ipse-dixit* of the jurisdictional police that the petitioner may not surrender in the event of his release on furlough, there is no material to deprive the petitioner of the legitimate privilege of being released on furlough.

13. In our view, the fact that show-cause notice was issued to the petitioner in connection with the alleged incident, dated 13th April 2020, wherein the co-inmate Sahil Kalsekar was allegedly assaulted by the petitioner and the other co-inmates, is not sufficient to deny furlough to the petitioner. On the one hand, the report indicates that the petitioner and the co-inmates were given a verbal warning. On the other hand, the show-cause notice was issued on 27th April 2020. However, despite the lapse of a period of one year and a half, no action has been taken against the petitioner. In our view, the show-cause notice, in the absence of timely follow-up action thereon, cannot be used as a ground to

decline the petitioner release on furlough or parole, which have been provided for a definite purpose.

14. For the foregoing reasons, we are persuaded to allow the petition. However, we deem it appropriate that, in addition to the mother of the petitioner, the petitioner shall furnish another independent surety. This, in our view, would take care of the apprehension on the part of the authorities.

15. Hence, the following order :

O R D E R

- (i) The petition stands allowed.
- (ii) The Competent Authority is directed to release the petitioner-Meghnath Gurunath Travadan @ Pille on furlough for a period of 14 days.
- (iii) In addition to the conditions which the Competent Authority may deem appropriate to impose in the facts of the case, the petitioner shall furnish an independent surety in the sum of Rs.15,000/-.
- (iv) The petitioner shall abide by all the conditions which may be imposed by the Competent Authority.

(v) Necessary order for release of the petitioner on furlough shall be passed within a period of two weeks from the date of communication of this order.

Rule made absolute in the aforesaid terms.

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

[N.J. JAMADAR, J.]

[S.S. SHINDE, J.]