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

**WRIT PETITION NO. 3275 OF 2021**

Anilkumar alias Lapetu Ramshakal  
Sharma

**...Petitioner**

**Versus**

The State of Maharashtra & ors.

**...Respondents**

Mr. Prosper D'souza, for the Petitioner.

Mr. V. B. Kondedeshmukh, APP for the State/Respondent.

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

**RESERVED ON: 28<sup>th</sup> SEPTEMBER, 2021.**

**PRONOUNCED ON: 6<sup>th</sup> 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. This petition under Article 226 of the Constitution of India, takes exception to the legality and correctness of the order dated 16<sup>th</sup> March, 2021 in Appeal No. 21774/1780/2021, passed by the Additional Director General of Police and Inspector General, Prison and Correctional Services, Pune-1 – respondent no.2, whereby the appeal preferred by the petitioner against denial of furlough leave by Deputy Inspector General of Prisons came to be dismissed, affirming the order dated 17<sup>th</sup> September, 2020.

3. Shorn of unnecessary details, the background facts leading to this petition can be stated as under.

The petitioner came to be convicted by the Court of Session, Mumbai, in Sessions Case No.511 of 2005, for the offence punishable under Section 302 of the Indian Penal Code, 1860 ("the Penal Code") and sentenced to suffer imprisonment for life, with default stipulation. The petitioner is undergoing the said sentence of life imprisonment. The petitioner applied for furlough. The Deputy Inspector of General, Prisons, was persuaded to reject the application on the ground that when the petitioner was released on furlough, on two prior occasions, the petitioner had overstayed and was required to be arrested and brought back to prison. In the year 2011, the petitioner had reportedly overstayed by 108 days, and in the year 2013, the period of overstay was 383 days. Moreover, during the said period of overstay, a crime was registered against the petitioner at CR No.173/2013 at Bangur Nagar Police Station, Thane, for the offences punishable under Sections 457 and 380 of the Penal Code. It was further noted that on account of the indiscipline and threat to security, the petitioner was transferred to Yerwada Central Prison from Nashik Road Central

Prison on 7<sup>th</sup> April, 2017. Thus, invoking Rule 4(4), (10) and (12) the competent authority declined furlough to the petitioner.

4. Being aggrieved, the petitioner preferred an appeal. By the impugned order respondent no.2 – the appellate authority dismissed the appeal concurring with the view taken by the Deputy Inspector General of Prison.

5. Being further aggrieved the petitioner has invoked the writ jurisdiction of this Court.

6. We have heard Mr. Prosper D'souza, the learned Counsel for the petitioner and Mr. V. B. Kondedeshmukh, the learned APP for the State, at some length. With the assistance of the learned Counsels for the parties, we have perused the material on record including the impugned orders and the report submitted by the Superintendent of Prison, Yerwada Central Prison.

7. Mr. D'souza, the learned Counsel for the petitioner submitted that the authorities were in error in declining to grant furlough to the petitioner on the premise that the petitioner had not returned to prison on time, when he was released on furlough in the year 2011 and 2013. It was urged that the time-lag of more than eight years since the said default ought to have been taken into account by the authorities. Since

the petitioner has already been punished by striking off his name from the remission register and permanently debarring him from claiming remission, the authorities could not have banked upon the said ground again to deny furlough, submitted Mr. D'souza. Laying emphasis on the period of 15 years actual imprisonment undergone by the petitioner Mr. D'souza would urge that the denial of furlough defeats the very object of the furlough, which is a facet of penal reform.

8. In contrast to this, Mr. Kokndedeshmukh, the learned APP, stoutly submitted that the authorities were fully justified in declining to release the petitioner on furlough. Twice the petitioner was released on furlough and on both the occasions the petitioner overstayed and was required to be apprehended and brought back to prison. Laying stress on the long period of overstay (383 days), in the case of last release, Mr. Kondedeshmukh submitted that the apprehension entertained by the authorities cannot be said to be unfounded. The fact that a crime was registered against the petitioner, during the said period, is a pointer to the propensity of the petitioner to indulge in activities prejudicial to the maintenance of public peace and tranquility and, therefore, the authorities

were well within their rights in rejecting the prayer for furlough, urged Mr. Kondedeshmukh.

9. The rival submissions now fall for consideration.

10. To begin with, the period of incarceration the petitioner has actually undergone. The petitioner has been sentenced to suffer imprisonment for life by judgment and order dated 26<sup>th</sup> June, 2007. The petitioner has undergone 15 years and one month's actual imprisonment. Undoubtedly, the petitioner has been sentenced to imprisonment for life. However, the period of imprisonment actually undergone by the petitioner is significant.

11. Indisputably, the petitioner overstayed by a period of 108 days when he was released on furlough in the year 2011 and 383 days in the year 2013. However, the fact that for the said overstay the petitioner had already been punished by removing his name from the remission register cannot be lost sight of. The time-lag also assumes significance. A period of almost eight years has elapsed from the date the petitioner was apprehended and brought back to prison.

12. As regards the registration of CR No.173 of 2013, for the offences punishable under Sections 457 and 380 of the Penal Code, at this juncture, there is no material to demonstrate that

the circumstances in which the said offences were allegedly committed were such that they posed danger to public peace and tranquility. Indisputably, the concepts of “law and order” and threat to “public peace and tranquility” are distinct. The registration of the crime for the offences punishable under Sections 380 and 457 of the Penal Code thus cannot be arrayed against the petitioner to deny him the benefit of furlough forever. To do so would amount to completely loose sight of the object of the correctional measure of release on furlough and parole. The release of a prisoner on parole is considered necessary from the point of view of the prisoner as well as the society. Such a release, *inter alia*, affords opportunity to the prisoner to assimilate with his family and the changed surrounding, after release from prison. The society also has an abiding interest in ensuring that a prisoner returned to the society as a productive and responsible citizen.

13. We do not find that the ground of the transfer of the petitioner from Nashik Road Central Prison to Yerwada Central Prison could have been staked against the petitioner. On the one hand, there is no supporting material to indicate that the petitioner indulged in prison indiscipline. On the other hand, the Superintendent, Yerwada Central Prison, has recommended

the case of the petitioner for release on furlough opining that the petitioner regularly and responsibly discharged the duties entrusted to him.

14. In the aforesaid view of the matter, especially the period of actual imprisonment 15 years and one month undergone by the petitioner, in our view, the authorities were not justified in declining to release the petitioner on furlough. We are, thus, inclined to allow the petition.

15. Hence, the following order:

**: Order :**

The petition stands allowed.

- (i) The impugned order dated 16<sup>th</sup> March, 2021, passed by the Additional Director General of Police and Inspector General, Prison and Correctional Services – respondent no.2, stands quashed and set aside.
- (ii) The petitioner – convict Anilkumar alias Lapetu Ramshankar Sharma, is directed to be released on furlough for a period of 14 days on usual terms and conditions as the competent authority may find suitable to impose in the circumstances of the case.
- (iii) The petitioner shall abide by all conditions which may be imposed by the competent authority.

- (iv) Necessary order of release of the petitioner on furlough be passed by 18<sup>th</sup> October, 2021.
- (v) Rule made absolute in the aforesaid terms.
- (vii) All concerned shall act on an authenticated copy of this judgment and order.

**[N. J. JAMADAR, J.]**

**[S. S. SHINDE, J.]**