

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH

CRIMINAL WRIT PETITION NO. 229 OF 2020

Gajanan Haridas Gavrane
(C-5391), detained in
Open Prison Central Jail,
Amravati (presently in Jail) ... PETITIONER

Versus

1. State of Maharashtra
through Deputy Inspector
of Prison (Eastern Region),
Nagpur.
2. The Superintendent of Open
Prison, Central Jail, Amravati. ... RESPONDENTS

Shri K.C. Deogade, Advocate (appointed) for the petitioner.
Shri I.J. Damle, APP for the respondents.

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**CORAM : DIPANKAR DATTA, C.J. &
PUSHPA V. GANEDIWALA, J.
FEBRUARY 05, 2021.**

ORAL JUDGMENT : (Per PUSHPA V. GANEDIWALA, J.)

Heard Shri K.C. Deogade, learned counsel
(appointed) for the petitioner and Shri I.J. Damle, learned
Additional Public Prosecutor for the respondents.

2. The challenge in this writ petition is to the order dated 17.01.2020 passed by the respondent no. 2 whereby the application of the petitioner for grant of furlough leave for a period of 21 days came to be dismissed for the following reasons :

(i) The Police verification report dated 22.11.2019 reflects that the surety Shri Vilas Dattuji Pusnake did not turn up to furnish surety and there is no clarity about his financial competency to furnish surety.

(ii) The witnesses and neighbours have taken objection for release of the petitioner on furlough leave with the apprehension that he may breach the peace in the locality.

3. Shri Deogade, learned counsel for the petitioner submits that the petitioner in his application dated 22.11.2019 has clearly mentioned the name of his father i.e. Haridas Shamrao Gavran, who would stand as a surety. In support of his contention, the learned counsel pointed out a copy of letter at page 11 of the application sent by the petitioner to this

office.

4. As against this, Shri Damle, learned APP appearing for the respondents has filed an affidavit in reply supporting the impugned order.

5. We have considered the submissions advanced on behalf of both sides and perused the record.

6. At the outset, the petitioner is said to be convicted for the offence punishable under Sections 302 and 307 of the Indian Penal Code and is undergoing life imprisonment. Rule 1(A) of the Prisons (Bombay Furlough and Parole) Rules, 1959, (hereinafter referred to as 1959 Rules) set out the objectives for grant of furlough and parole leave as progressive measures of correctional services. These objectives are as under :

“(a) To enable the inmate to maintain continuity with his family life and deal with family members,

(b) To save him from evil effects of continuous

prison life,

(c) To enable him to maintain and develop his self-confidence,

(d) To enable him to develop constructive hope and active interest in life.”

7. Undisputedly, this is the first application of the petitioner before the Jail Superintendent for his furlough leave after undergoing sentence of more than three years. As per Rule 3(C) of the 1959 Rules, if a prisoner is sentenced to imprisonment for a period exceeding fourteen years, he shall be eligible for furlough on completion of three years of actual imprisonment, however, the prisoner shall not be given furlough exceeding 21 days in a calendar year for the first five years of his imprisonment and thereafter for the period not exceeding 28 days.

8. Rule 4 of the 1959 Rules deals with eligibility for grant of furlough leave. There are 21 exceptions set out in this Rule for not considering grant of furlough leave.

9. Shri Damle, learned APP could not point out in the present case, as to how the petitioner is not eligible under Rule 4 of the 1959 Rules, except Exception no. 15 i.e. failure to give surety for maintaining peace and good behaviour. Insofar as the apprehension of the neighbours and witnesses is concerned, that can be taken care of by imposing suitable conditions on the petitioner.

10. Considering the avowed object to grant furlough and parole leaves as set out in Rule 1(A) of the 1959 Rules, which has been inserted vide Notification No.MIS-1316/C.R.669/16/PRS-3, dated 16.04.2018 i.e. to enable the inmate to maintain continuity with his family life and deal with family members, to save him from evil effects of continuous prison life, to enable him to maintain and develop his self-confidence and to enable him to develop constructive hope and active interest in life; in the opinion of this Court, it is a fit case to remand the matter to the respondent no. 2 to decide the same afresh in the light of the above observations and in accordance with law, if the petitioner furnishes

competent surety.

11. Criminal Writ Petition is disposed of accordingly.

12. The fee of Shri Deogade, learned counsel appointed for the petitioner is quantified at Rs.1,500/- (Rs. One thousand five hundred only).

(PUSHPA V. GANEDIWALA, J.)

(CHIEF JUSTICE)

*GS.

Gopichand
Shamdasani

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