

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.409 OF 2021

Ashwin @ Gondya Dipak Telang,
Convict No. C/5546,
Presently at Central Prison, Amravati.

....PETITIONER

---- VERSUS ----

1. Deputy Inspector General (Prisons) (East),
Nagpur.
2. The Superintendent Central Prison,
Amravati.

.... RESPONDENTS

Shri Mir Nagman Ali, Advocate for the Petitioner.
Shri V. A. Thakare, A.P. P. for the Respondents/State.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 08.09.2021.

JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard.
2. Rule. Rule made returnable forthwith.
3. By this writ petition under Article 226 of the Constitution of India, the petitioner is challenging order passed by the respondent No.1 dated 01.04.2021 thereby refusing to grant furlough leave of 21 days to the petitioner.
4. The petitioner is a convict for the offence punishable under Section 302, 307, 143, 147, 148, 149, 449 of the Indian Penal Code, and is undergoing punishment of imprisonment for life. The

petitioner had undergone imprisonment of 3 years and 9 days on the date of filing of furlough leave application. The petitioner on 11.12.2020 filed an application for grant of furlough leave of 21 days with the respondent No.1. The respondent No.1 by order dated 01.04.2021 rejected the furlough leave application of the petitioner mainly on the ground that the petitioner had assaulted fellow prisoner Amarsingh Thakur and as a punishment order of reduction of 20 days remission from the remission earned by the petitioner was passed. The respondent No.1 therefore, rejected the furlough leave application of the petitioner relying on Rule 4(4), 4(6) of the Prisons (Bombay Furlough and Parole) Rules, 1959.

5. The petitioner has therefore, challenged the order dated 01.04.2021 by way of present petition. This Court on 10.06.2021 issued notice to the respondents. The respondent No.2 has filed reply dated 19.06.2021 stating that since the witnesses in the Sessions Trial have objected for release of the petitioner; the petitioner having assaulted the fellow prisoner, punishment for reduction of 20 days of remission cut was passed against him and therefore, the petitioner is not eligible for being released on furlough leave.

6. We have carefully considered the reasons stated in the impugned order. We have also carefully considered the Rule 4(6) of

the Prisons (Bombay Furlough and Parole) Rules, 1959 which reads as under :-

“Rule 4(6) - Prisoners whose work and conduct are, in the opinion of the Superintendent of the Prison, not satisfactory enough.”

7. On careful reading of aforesaid Rule, it appears that the Superintendent of Prison is entitled to access work and conduct of prisoner and if he finds the same to be unsatisfactory, he can refuse furlough leave to the prisoner. The Prison Authorities are required to take into consideration object of furlough which enables the prisoner to maintain continuity with his family life and to deal with family matters and save him from ill effect of continuous jail life. Taking into consideration objects of furlough system, the request of the petitioner in the facts and circumstances of the present case could not have been denied by the respondent No.1 merely because the order of remission cut was passed on 03.04.2021. We have also considered the order of remission cut and taking into consideration the nature of allegations made against the petitioner in the said order, we are of the opinion that the request of the petitioner to release him on furlough leave could not have been rejected in exercise of power under Rule 4(6) of the said Rules.

8. In so far as ground of witnesses objecting the release of the petitioner is concerned, there is no material produced by the

respondent No.2 in the affidavit in reply filed in the present petition. We have also considered the copy of police report, which is annexed along with the reply. On perusal of the police report, it appears that there is no material disclosed in the report, which is the basis of apprehension expressed in the police report. In absence of the material in support of apprehension expressed in the police report, the respondent No.1 was not justified in rejecting the application of the petitioner of furlough leave. We are therefore, satisfied that the respondent No.1 has exercised its power, which has resulted into miscarriage of justice.

9. We therefore, pass following order :

i. The impugned order dated 01.04.2021 passed by the respondent No.1 is quashed and set aside.

ii. The respondent No.1 is directed to release the petitioner on furlough leave for a period of 21 days on such terms and conditions as the respondent No.1 deems fit and proper.

10. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE