

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

CRIMINAL WRIT PETITION NO.416 OF 2021

Sanjay Mahadeo Gajbhiye
Aged about 43 years,
R/o Krishna Purwada Ward,
Near Pili Building, Gondia,
Dist. Gondia.
(C/5109, Central Prison,
Amravati, District Amravati)

.....PETITIONER

...VERSUS...

1. Deputy Inspector General
Prison, East, Nagpur.
2. Superintendent Central
Prison, Amravati.

....RESPONDENTS

Shri S.D. Chande, Advocate for petitioner.
Ms N.R. Tripathi, A.P.P. for respondents.

CORAM:- M.S. SONAK AND PUSHPA V. GANEDIWALA, JJ.
DATE :- 25th NOVEMBER, 2021

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Rule. Rule is made returnable forthwith. Heard finally
with consent of learned counsel appearing for both the parties.

2. The order of rejection of furlough to the petitioner is
the subject matter of challenge in this petition.

3. It is stated that the petitioner is undergoing a
sentence of life imprisonment for the offence under Section 302 of

Indian Penal Code 1908 and has already undergone the imprisonment for a period around 13 years.

4. The application of the petitioner for his release on furlough leave to meet his family and especially his mother, who is sick since long time, came to be rejected primarily on the ground of adverse police report.

5. It is alleged that the during the furlough leave of the petitioner in the year 2014, he had committed three crimes i.e. (i) Crime No.216 of 2014 dated 19.09.2014 under Sections 143, 147, 148, 353, 504 and 506 of the Indian Penal Code (for short “the IPC”), (ii) Crime No.226 of 2014 dated 27.12.2014 under Section 394 read with Section 34 of the IPC and (iii) Crime No.227 of 2014 dated 27.12.2014 under Section 143, 149, 452, 427, 504, 506 of the IPC.

6. It is stated that all the aforesaid crimes against the petitioner came to be registered on the complaint of one person by name Murlidhar alias Nainumal Rohada with the spite to trouble the petitioner due to his personal hatred. It is further stated that Crime No.3008 of 2015 punishable under Section 224 of the IPC came to closed under Section 258 of the Cr.P.C. It is further stated

that since 2015 the petitioner has not availed any furlough or parole leave.

6. Ms Nandita Tripathi, learned Additional Public Prosecutor appearing on behalf of the State filed an affidavit-in-reply reiterating therein the reasons recorded in the impugned order. It is also stated that the petitioner availed the furlough leaves in the year 2011 and 2014 and overstayed on both the occasions and on one occasion he was required to be brought back to the prison.

7. We have considered the rival submissions. At the outset, it is not disputed that the petitioner is otherwise eligible for furlough leave as per the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short "the Prisons Rules"). The documents which are obtained by the petitioner under Right to Information Act and annexed to the petition, would indicate that offence punishable under Section 224 of the IPC which was registered against the petitioner for his overstay during his earlier release, came to be closed under Section 258 of the Cr.P.C. vide order dated 09.11.2017. Other three crimes as aforesaid, came to be registered on the complaint of Murlidhar alias Nainumal Rohada. In these crimes, the complainant has alleged about

threats extended by the petitioner in the year 2004 and 2011. Now, we are in the 2021. The reply on behalf of the state doesn't demonstrate that the perception of threats still persists to the complainant. Secondly, by imposing suitable conditions, this difficulty can be sorted out. The acknowledged object in granting furlough and parole leave to the inmates as per the Prison Rules are (a) to enable the inmate to maintain continuity with his family life and deal with family matters, (b) to save 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.

8. It is pertinent to note here that in the year 2011 when the petitioner was released, he was required to be brought back to the prison. Thereafter, he was again released in the year 2014 and he, that time surrendered himself however after overstay of 49 days. In any case, he was not required to be arrested at that time.

9. Admittedly, since 2014-15, the petitioner has not availed any furlough or parole leave. Having regard the avowed object for grant of furlough or parole leave to the inmates, and in the facts and circumstances of the case, in our considered view, by

imposing suitable conditions, the petitioner can be released on furlough leave to meet his family and specially to his sick mother.

10. Therefore, we allow the petition by quashing and setting aside the impugned order dated 16.04.2021 passed by respondent no.1 – Deputy Inspector General Prison, East, Nagpur.

11. We direct the respondent no.2 to release the petitioner on furlough leave as per the Rules and subject to such terms and conditions, including a condition that during his leave period the petitioner shall not enter into the locality where complainant/witness – Murlidhar alias Nainumal Rohada resides nor shall he extend any kind of threats to the said complainant.

Rule is made absolute in the above terms.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)

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