

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

CRIMINAL WRIT PETITION NO.427 OF 2021

Prathmesh @ Nana S/o. Ankush Rode,
Aged - 32, Convict No. C – 6539,
(Presently at Central Prison, Amravati)
Distt. Amravati.

....PETITIONER

---- VERSUS ----

1. State of Maharashtra through
D. I. G. Prison, (East), Nagpur.
2. The Superintendent of Central Prison,
Amravati, Distt. Amravati.

.... RESPONDENTS

Shri A. Y. Sharma, 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.

ORAL 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 16.04.2021 thereby refusing to grant furlough leave of 28 days to the petitioner.
4. The petitioner is a convict for the offence punishable under Section 302 of the Indian Penal Code, and is undergoing

punishment of imprisonment for life. The petitioner had undergone imprisonment of 5 years, 3 months and 3 days on the date of filing of furlough leave application. The petitioner on 03.02.2020 filed an application for grant of furlough leave of 28 days with the respondent No.1. The respondent No.1 by order dated 16.04.2021 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), 4(12) of the Prisons (Bombay Furlough and Parole) Rules, 1959.

5. The petitioner has therefore, challenged the order dated 16.04.2021 by way of present petition. This Court on 17.06.2021 issued notice to the respondents. The respondent No.2 has filed reply dated 30.06.2021 stating that since the witnesses in the Sessions Trial have objected for release of the petitioner and the petitioner having assaulted the fellow prisoner, punishment for reduction of 20 days of remission 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(12) of the Prisons (Bombay Furlough and Parole) Rules, 1959, which reads as under :-

“Rule 4(12) - Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak, riot, mutiny or escape, or who have been found to be instigating the serious violation of prison discipline, smuggling of narcotic and psychotropic substances including convicted under Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), rape or rape with murder, attempt to rape with murder and foreigner prisoners (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section).”

7. On careful reading of aforesaid Rule, it is clear that the bracketed portion of the Rule 14(12) permits Prison Authorities to release prisoner on furlough leave, if he has already completed punishment imposed upon the prisoner. In the facts of the present case, the order of remission cut was passed on 05.01.2021. In our view, since the petitioner has already undergone the punishment confirmed by the order dated 05.01.2021, there is no impediment for releasing the petitioner on furlough leave. 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.

8. We therefore, pass following order :

i. The impugned order dated 16.04.2021 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 28 days on such terms and conditions as the respondent No.1 deems fit and proper.

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

JUDGE

JUDGE