

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

CRIMINAL WRIT PETITION NO.459 OF 2021

Suhas Anil Khairkar,
Aged 24 years, Convict No. C/5548,
Presently at Central Prison, Amravati.

....PETITIONER

---- VERSUS ----

1. Deputy Inspector General (Prisons) (East)
Nagpur.

2. The Superintendent Central Prison,
Amravati.

....RESPONDENTS

Shri Shahrukh Shah, Advocate h/f. Shri M. N. Ali, Advocate for
the petitioner.

Ms N. R. Tripathi, A.P.P for the respondents/State.

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

DATE : 21.08.2021.

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

1. Heard.

2. **RULE.** Rule made returnable forthwith.

3. By this writ petition under Article 226 and 227 of the Constitution of India, the petitioner is challenging order dated 07.05.2021 passed by the respondent No.1 thereby refusing to release the petitioner on furlough leave.

4. The petitioner is a convict for the offences punishable under Sections 302, 307, 143, 147, 148, 149, 449 of the Indian

Penal Code. The petitioner has undergone 3 years of imprisonment on the date of filing of furlough leave application. The petitioner applied for grant of furlough leave on 11.12.2020. The respondent No.1 by order dated 07.05.2021 rejected the application for furlough leave of the petitioner.

5. The petitioner has therefore, challenged the order dated 07.05.2021 by filing present petition. This Court on 02.07.2021, issued notice to the respondents. The respondent No.2 has filed reply dated 18.07.2021 stating that the surety furnished by the petitioner is not eligible. It is stated that if the petitioner is released on furlough leave, there will be question of law and order in the said area.

6. We have carefully considered the impugned order and the reply filed by the respondent No.2. On consideration of the impugned order, it appears that the respondent No.1 has rejected furlough leave application relying on the adverse police report submitted by the Superintendent of Police, Yavatmal. On perusal of the report and reply, it appears that the basic facts and the material in support of the apprehension that there is apprehension of breach of peace and tranquility in the area, is absent. This Court in various judgments has taken consistent view that unless and until the adverse police report is based on a material justifying such report,

the furlough leave application of the prisoner cannot be rejected. On consideration of the material produced on record by the respondents, we are satisfied that neither the police report nor the reply submitted by the respondent No.2 reflect the material so as to justify apprehension of breach of peace and tranquility in case the petitioner is released on furlough leave.

7. The learned Advocate for the petitioner made a statement that the petitioner is ready to furnish fresh surety if required by the Police Authorities.

8. In view of the above, we pass the following order :

i. The impugned order dated 07.05.2021 passed by the respondent No.1 is quashed and set aside.

ii. The respondent No.1 is directed to grant furlough leave of 21 days to the petitioner on such terms and conditions as the respondent No.1 deems fit and proper within a period of two weeks from today.

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

JUDGE

JUDGE