

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

CRIMINAL WRIT PETITION NO. 456/2021

Dilip s/o Shripat Bhalerao,
aged 54 years, Convict No.C-10671,
(Presently at Central Prison, Nagpur),
Dist. Nagpur.

.....PETITIONER

...V E R S U S...

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

...RESPONDENTS

Mr. A. Y. Sharma, Advocate for petitioner.
Mrs. N. Tripathi, A.P.P. for respondent nos. 1 and 2.

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

DATE:- JULY 26, 2021

ORAL JUDGMENT (Per: Amit B. Borkar, J.)

1. Rule. Rule is made returnable forthwith. Heard finally
by consent of learned counsel for the parties.

2. By this petition under Article 226 of the Constitution of
India, petitioner is challenging order dated 11.05.2021 passed by
respondent no.1, thereby rejecting his application for grant of
furlough leave of 28 days.

3. The petitioner has been convicted for an offence punishable under Section 302 of the Indian Penal Code and has undergone 7 years 7 months and 20 days at the time of filing of the application for furlough.

4. The petitioner had, on 24.01.2021, filed an application for furlough, which has been rejected by impugned order dated 11.05.2021. The petitioner has, therefore, filed the present writ petition. This Court on 02.07.2021 issued notices to respondents. Respondent no.2 has filed affidavit dated 19.07.2021 stating that police report submitted by Assistant Commissioner of Police, Nalasopara, Mira-Bhainder, Vasai-Virar Police Commissionarate, is adverse to the petitioner as there is a possibility of breach of peace in the said area. It is also stated that the surety is an old aged person.

5. We have carefully considered submissions made by respondent no.2 in the reply. On consideration of police report, submitted by Assistant Commissioner of Police, there is no material to support the conclusion drawn by the Assistant Commissioner of Police that there is a possibility of breach of

peace in the said area. Undisputedly, application filed by the petitioner is the first application. Therefore, we do not find justification in the report submitted by the Assistant Commissioner of Police apprehending the possibility of breach of peace. Insofar as the reason of surety being an old aged person is concerned, that itself cannot be a ground to refuse the petitioner release on furlough.

6. In view of above, we are satisfied that the petitioner deserves to be released on furlough. We, therefore, pass the following order.

The writ petition is allowed. The petitioner shall be released on furlough leave of 28 days on such conditions as respondent no.2 deems fit and proper.

Rule is made absolute in the above terms.

JUDGE

JUDGE

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