

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

CRIMINAL WRIT PETITION NO.535 OF 2021

Shahaji S/o. Vasant Patil,
Aged -51, Convict No.C - 10558,
(Presently at Central Prison Nagpur),
Dist. Nagpur.

....PETITIONER

---- VERSUS ----

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

.... RESPONDENTS.

Shri A. Y. Sharma, 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 : 25.08.2021.

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

1. Heard.
2. Rule. Rule is made returnable forthwith.
3. By this petition under Article 226 of the Constitution of India, the petitioner is challenging order passed by the respondent No.1 rejecting furlough leave application of the petitioner for a period of 21 days.

4. The petitioner has been convicted for the offences punishable under Sections 120-B, 255, 275, 259, 260, 420, 465, 467, 468, 471 of the Indian Penal Code and is undergoing imprisonment of five years.

5. After the completion of a period of one year, the petitioner on 21.11.2020 filed application for grant of furlough leave of 21 days. The respondent No.1 by impugned order dated 31.05.2021 has rejected the said application on the ground that the report received from the Sub Divisional Officer, Jat, District Sangali is adverse to the petitioner.

6. The petitioner has therefore filed the present petition. This Court on 04.08.2021 issued notice to the respondents. The respondent No.1 on 13.08.2021 has filed reply stating that the police verification report received from the Sub Divisional Officer, Jat Division, District Sangali is adverse to the petitioner.

7. We have carefully considered the impugned order and the reply filed by the respondent No.2. The impugned order reflects that the police verification report is adverse to the petitioner. On perusal of Rule 4(4) of the Prisons (Bombay Furlough and Parole) Rules, 1959, we are of the view that merely because the police

report is adverse, the said reason by itself is not sufficient to refuse furlough leave to a prisoner, unless the report is based on material. If police report is adverse and discloses no material or existence of any material for passing adverse conclusion, the Authority is not justified in rejecting furlough leave application of the petitioner. On scrutiny of the reply along with its annexures and reasons stated in the order, we do not find any material, on which apprehension expressed in the report of the Sub Divisional Officer, Jat is based. Neither the impugned order nor the police report refer to the fact that there exists some material on record, perusal of which would show that the apprehension expressed by the Authority has a reasonable foundation.

8. We therefore, pass following order :

- i. The impugned order dated 31.05.2021 passed by the respondent No.1 rejecting the furlough leave application of the petitioner is quashed and set aside.
- ii. The respondent No.1 is directed to grant furlough leave of 21 days to the petitioner upon such conditions as may be permissible in terms of Rules within a period of one week from the date of receipt of the order.

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

JUDGE

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