

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

CRIMINAL WRIT PETITION NO.546 OF 2021

Anil S/o. Bhanudas Waghmode,
Aged -46, Convict No.C - 10128,
(Presently at Central Prison Nagpur),
Dist. Nagpur.

....PETITIONER

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

.... 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 : 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 dated 22.03.2021 passed by the respondent No.1 rejecting furlough leave application of the petitioner for a period of 28 days.

4. The petitioner is convict for the offences punishable under Sections 120-B, 302 of the Indian Penal Code and Section 3(1)(i), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act, 1999 and is undergoing sentence of imprisonment for life.

5. On the date of filing of furlough leave application, the petitioner had undergone imprisonment for 8 years 10 months and 18 days. The petitioner has therefore filed an application with the respondent No.1 on 22.09.2019. But the said application was rejected by the respondent No.1 by impugned order dated 22.03.2021 on the ground that the police verification report is adverse.

6. The petitioner has therefore filed the present petition challenging order dated 22.03.2021. This Court on 04.08.2021 issued notice to the respondents. The respondent No.2 has filed reply stating that since the police report is adverse to the petitioner, the furlough leave application of the petitioner is rejected. The reply indicates that the petitioner was released two times earlier, once on furlough leave and another on parole leave. On both occasions, the petitioner has surrendered himself on or before due dates.

7. We have carefully considered the impugned order and the reply filed by the respondent No.2. It is undisputed fact that the

petitioner has been released earlier twice and on both the occasions the petitioner has surrendered himself on due dates. 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 materials. 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 police report 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 22.03.2021 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 28 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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