IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETN. NO. 9 OF 2021

PETITIONER :- Sagar S/o Ishwar Khairnar, R/o. Near Saptshrungi Devi Temple, Pimpalgaon, Taluka – Niphad, District – Nashik. (C-5161, presently at Central Prison, Amravati).

...VERSUS...

RESPONDENTS :- 1. Deputy Inspector General Prison East, Nagpur.

2. Superintendent, Central Prison, Amravati.

Mr. S.D.Chande, Advocate for the petitioner.
Ms N.R.Tripathi, A.P. P. for the respondents.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.

DATED : 06.04.2021.

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

1. Heard.

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

3. The petitioner who upon his conviction for the offences punishable under sections 302 and 506 of the Indian Penal Code is

undergoing life imprisonment. Presently, the petitioner has been lodged in the Amravati Central Prison.

4. On 24/07/2020, the petitioner made an application with the respondent No.1 for grant of furlough leave for a period of 21 days which has been rejected on the ground that there is adverse Police Report against the petitioner.

5. The learned Advocate for the petitioner submits that the impugned order is perverse, arbitrary and illegal while the learned A.P.P. contends that the impugned order is perfectly legal.

6. On scrutiny of the impugned order, which is based upon adverse Police Report, we find that the Authority i.e. the respondent No.1 has not referred to any material on the basis of which aforesaid apprehension could have been expressed by the respondent No.1. Neither the impugned order, nor did the Police Report refer to the basic fact that there existed some material on record, which upon perusal, would show that apprehension so expressed by the Authority has a reasonable foundation, though in an executive order like the impugned order, it is not necessary for the Authority passing the order to dwell upon the reasons in detail. It is necessary for such Authority to reach his subjective satisfaction upon consideration the material on record

and if it is shown that the subjective satisfaction was without any basis, it would be an unreasonable order and hence, be an order vulnerable in law. This is called principle of wednesburry unreasonableness (*see*: ***Sumit Ramkrushna Maraskolhe v. Deputy Commissioner of Police, Zone-I, Nagpur***) reported in ***2019 (2) Mh.L.J. (Criminal) 14 (Full Bench)***. By applying this principle to the impugned order, we find that it does not satisfy the test of principle of wednesburry unreasonableness and therefore, it cannot be sustained in the eye of law.

7. The learned A.P.P. submits that there is provision under Rule 4 of the Prisons (Furlough and Parole) Rules, 1959, which lays down that the prisoner be not granted furlough leave when the Police Report is adverse.

8. We are of the opinion that it cannot be said that as a rule of universal application that just because Police Report is adverse, no furlough leave can be granted. All will depend on facts and circumstances of the each case and in a given case, it is possible that though the Police report is adverse, it cannot be accepted to be true because the adverse opinion expressed therein is not founded on any reasonable criteria or material. If Police Report is adverse and discloses, no material or existence of any material for basing any such adverse

conclusion, the Authority is not justified in rejecting furlough leave application of the petitioner.

9. In the result, we pass following order.

i. The impugned order dated 20/11/2020 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 upon such conditions as may be permissible to be imposed upon the petitioner in terms of the Rules within one week from the date of receipt of this order.

10. Rule is made absolute accordingly.

(AMIT B. BORKAR, J) (Z.A.HAQ, J)

Ghanshyam Khunte

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