

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

CRIMINAL WRIT PETITION NO. 821 OF 2021

Deepak s/o Gulab Bhatambrekar,
aged about 35 years, Occ. Prisoner,
R/o At present District Prison – Amravati.
Prisoner No. C-5012

...PETITIONER

Versus

1. State of Maharashtra,
through the Dy. Inspector General of Prison,
Eastern Region, Wardha Road, Nagpur.
2. Superintendent of District Prison,
Amravati.

...RESPONDENTS

Mr. A.K. Bhangde, Advocate for the petitioner.
Mrs. N.R. Tripathi, A.P.P. for the respondents.

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CORAM : M.S. SONAK AND
PUSHPA V. GANEDIWALA, JJ.
DATED : DECEMBER 21, 2021.

JUDGMENT (PER : PUSHPA V. GANEDIWALA, J.) :

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel appearing for the parties.

2. The challenge in this petition, filed under Article 226 of the Constitution of India, is to the order dated 11/08/2021 passed by respondent No.1, whereby the application of the petitioner for grant of furlough leave was rejected. The petitioner is convicted for the offence punishable under Sections 302, 148, 143 and 120B read with Section 149 of the Indian Penal Code.

3. It is stated that the petitioner is behind the bar since more than six years. He had applied for furlough on 15/04/2020, which came to be rejected, as the father of the petitioner refused to stand as surety for him.

It is further stated that the second application for grant of furlough of the petitioner came to be rejected by respondent No.1 under Rules 4(4), 4(6) and 4(10) of THE Prisons (Bombay Furlough and Parole) Rules, 1959 (“**Rules of 1959**”).

4. Mr. Bhangde, learned counsel for the petitioner, submitted that the younger brother of the petitioner – Shankar

Gulab Gharbudve is now ready to stand as a surety and that he is competent to act as surety for the petitioner. He submitted that the rejection of furlough on the ground of public peace and tranquility, without any material, is illegal, and thus prayed for granting furlough to the petitioner.

5. On the contrary, Mrs. Tripathi, learned A.P.P., filed reply-affidavit on behalf of respondent No.2, thereby opposed the relief for grant of furlough to the petitioner.

6. We have considered the submissions put forth on behalf of both the sides and perused the record.

7. At the outset, the eligibility of the petitioner for grant of furlough is otherwise not disputed. Secondly, the apprehension, as expressed by the respondents in the impugned order for breach of public peace and tranquility if the petitioner is released on furlough, is without any substance on record. It appears since more than six years, the petitioner is undergoing incarceration without any furlough or parole leave. Furlough leave to the petitioner is rejected under Rules 4(4),

4(6) and 4(10) of the Rules of 1959. These rules are reproduced below for ready reference :

“4. Eligibility for furlough.-

All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough :-

(1) to (3) XXXX

(4) Prisoners whose release is not recommended in Police Commissionerate area by the Assistant Commissioner of Plice and elsewhere, by the Deputy Superintendent of Police on the grounds of public peace and tranquility;

(5) XXXX

(6) Prisoners whose work and conduct are, in the opinion of the Superintendent of the Prison, not satisfactory enough;

(7) to (9) XXXX

(10) Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough;”

8. It appears while rejecting furlough application of the petitioner, the respondents have wrongly applied Rule 4(10) of the Rules of 1959. The learned A.P.P. could not point out from the documents on record that at any time, the petitioner had escaped or attempted to escape from lawful

custody or have defaulted in any way in surrendering himself at the appropriate time after his release on furlough or parole leave. Secondly, neither the impugned order nor the reply on behalf of the State suggest about the conduct of the petitioner in jail, which in the opinion of the Superintendent of Prison, is not satisfactory enough in terms of Rule 4(6) of the Rules of 1959. So also, as stated above, there is no substantive reason mentioned in the impugned order for expressing apprehension by the respondents for breach of public peace and tranquility.

9. The objectives for grant of furlough and parole leave to the inmate have been brought by amending the Rules of 1959, thereby adding Rule 1(A), which reads thus :

“1(A). Objectives:-

Furlough and Parole leaves to inmates are progressive measures of correctional services. The objectives of releasing a prisoner on leave are:-

- (a) To enable the inmate to maintain continuity with his family life and deal with family matters,*
- (b) To save him from evil effects of continuous prison life,*
- (c) To enable him to maintain and develop his self-confidence,*

(d) To enable him to develop constructive hope and active interest in life.”

10. Given the aforesaid facts and circumstances of the case, so also considering the avowed objectives for grant of furlough and parole leaves to the inmate, which are the progressive measures of correctional services, we are of the opinion that by imposing suitable conditions, the petitioner can be released on furlough. Hence, the following order :

ORDER

- i. The Criminal Writ Petition is allowed.
- ii. The order dated 11/08/2021 passed by respondent No.1 is quashed and set-aside.
- iii. Respondent No.1 is directed to release the petitioner on furlough leave of 28 days on such terms and conditions to the satisfaction of the respondents.
- iv. Rule is made absolute in the aforesaid terms.

(PUSHPA V. GANEDIWALA, J.)
Sumit

Digitally signed by SUMIT CHETAN
AGRAWAL
Signature Date: 2021.12.25
(M.S. SONAK, J.)