

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.890 OF 2022

Rahul s/o Shrirang Chudawakar
Age: 30 years, Occu. Nil, Convict No.9259
R/o Janata Vasahat, Back side of
P.M.C. School, Sinhagad Road, Pune.
At present in Central Prison, Aurangabad .. Petitioner

Versus

1. The State of Maharashtra
2. The Dy. Inspector General of
Central Prison, Aurangabad.
3. The Additional D.G.P./Inspector
General of Prison and Correctional
Services Maharashtra State, Pune.
4. The Superintendent of
Central Prison, Aurangabad. .. Respondents

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Ms. Bharati B. Gunjal, Advocate for petitioner.
Mr. M. M. Nerlikar, APP for respondents – State.

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**CORAM : SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 20th September, 2022

ORDER :- [Per Smt. Vibha Kankanwadi, J.]

. By invoking the constitutional powers of this Court under Article 226 and 227 read with Article 14 of the Constitution of India, the petitioner, who is a convict, seeks issuance of appropriate writ for releasing him on furlough leave.

2. Heard learned Advocate Ms. Bharati B. Gunjal for the petitioner and learned APP Mr. M. M. Nerlikar for the respondents – State.

3. It has been vehemently submitted on behalf of the petitioner that the petitioner was convicted by learned Sessions Judge, Osmanabad and has been sentenced to suffer imprisonment for life for the offences punishable under Section 302, 363 and 364 of Indian Penal Code (for short "IPC") on 23.10.2020. He had filed application for furlough leave through Superintendent of Central Prison, Aurangabad to respondent No.2 on 13.03.2021. It appears that respondent No.2 had then called report from Assistant Police Commissioner, Sinhagad Road, Pune. Said Assistant Police Commissioner then gave adverse police report on 21.04.2021. Thereafter, respondent No.2 rejected the application given by the petitioner on the ground that the police report is adverse. Respondent No.2 failed to consider that furlough leave was not a matter of right, but was sought under the provisions of law for which there are set principles. In fact, respondent Nos.2 and 3 ought to have considered that no complaint was registered against the petitioner by any witness or even the informant. In fact, the petitioner's behaviour in the prison is good and satisfactory. It ought to have been considered for releasing him on furlough leave.

The aims and objects stated in Government Notification dated 16.04.2018 were not considered by respondent Nos.2 and 3 and, therefore, their order deserves to be set aside and necessary directions are required to be given to release the petitioner on furlough leave.

4. The learned APP has relied on the affidavit-in-reply filed by Superintendent, Aurangabad Central Prison Mrs. Aruna Arjunrao Mugutrao and submitted that after the petitioner had made application for furlough leave, it was sent to the Deputy Inspector General of Prison, Central Region, Aurangabad and the copy of the same was given to Assistant Commissioner of Police, Swargate Division, Pune for police inquiry report. Adverse inquiry report was given on 04.05.201. Prior to this petition, the petitioner had approached this Court by filing Criminal Writ Petition No.37 of 2022 wherein he was directed to file an appeal before the Additional Director General of Prison and Inspector General of Prison, Correction Services, Maharashtra State, Pune. Accordingly, the petitioner had filed the appeal. If the petitioner is released on furlough leave, there is possibility that the relatives of the deceased/informant/witnesses may get harmed and, therefore, the writ petition deserves to be rejected.

5. At the outset, it is to be noted that the learned Additional Sessions Judge, Osmanabad in Sessions Case No.31 of 2017, by judgment and order dated 23.10.2020, has convicted and sentenced the petitioner-accused thus :-

Sr. No.	Under Sections	Sentence	Fine
1.	Under Section 302 read with 34 of IPC	Life	Rs.3,000/-, in default, 03 months
2.	Under Section 363 read with 34 of IPC	07 Years	Rs.2,000/-, in default, 02 months
3.	Under Section 364 read with 34 of IPC	Life	Rs.3,000/-, in default, 03 months
4.	Under Section 3(2) of the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013.	07 Years	Rs.2,000/-, in default, 02 months

All substantive sentences awarded to the accused to run concurrently.

6. Thus, it is to be noted that the offence was alleged to have taken place within the jurisdiction of Osmanabad District. The application was filed by the petitioner and his proposed place of residence during period of leave was mentioned as Parvati Payatha, Janata Vasahat, Pune, where his father is permanently residing. It appears that the father had given affidavit to support the statement that he would see that after the leave period is over, his son again goes back to the prison. Such statement was also recorded by

P.S.I., Dattawadi Police Station, Pune on 12.04.2021. No such document has been produced to show that the behaviour of the petitioner in prison was objectionable or not good. No statements from those persons from Osmanabad District, who could have had got affected because of the leave of the petitioner have also not been recorded. Then on what basis the adverse report was given by Assistant Commissioner of Police, Swargate Division, Pune, is a question. Such report, which is not based on proper inquiry, should not have been considered by respondent Nos.2 and 3. Further, it appears that till today the petitioner has not sought any type of leave earlier. As on today, his detention for the conviction appears to be five years six months two days inclusive of the period for which he can avail leave. In other words, the actual conviction period undergone is five years one month and ten days. It also appears that the offence that was committed was of individual nature in a sense that large public was not affected and, therefore, when there was no evidence with the authorities that the leave that would be granted to the petitioner would be troublesome for the general public, then it ought to have been allowed. Hence, the case deserves sympathetic approach. Another fact is that such orders which are against the aims and object for which furlough leave or other leave of any kind have been created, then such orders cannot be allowed to be on record. Case is made out for using

constitutional powers of this Court. Hence, the following order :-

ORDER

- I) The writ petition stands allowed.
- II) The order passed by respondent No.3 on 11.05.2022 stands quashed and set aside. Respondent No.2 is directed to release the petitioner on furlough leave of such duration as maybe permissible in the eyes of law.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm