

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.948 OF 2022

Mangesh @ Mangya s/o Damodhar
Agawane Age: 35 years,
Occu. Convict. (No.8348),
R/o. Undergoing Sentence
in Central Jail, Aurangabad,
Tq. and Dist. Aurangabad

.. Petitioners

Versus

1. The State of Maharashtra
Through Additional Director General
of Police and Inspector General of
Prisons, Maharashtra State,
Pune - 1.
2. The Deputy Inspector General of
Prisons, Central Region, Aurangabad.
3. The Superintendent,
Aurangabad Central Prison
Harsul Aurangabad.

.. Respondents

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Mr. Rahul D. Awasarmol, Advocate for petitioner.
Mr. R. D. Sanap, APP for respondents - State.

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**CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : DECEMBER 05, 2022.

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

. Rule. Rule made returnable forthwith. Heard learned
Advocates for the parties finally, by consent.

2. The petitioner is a convict who has approached this Court by invoking the constitutional powers of this Court under Article 226 and 227 of the Constitution of India to challenge the denial of furlough leave to him.

3. Heard learned Advocate Mr. R. D. Awasarmol for the petitioner and learned APP Mr. R. D. Sanap for respondents - State.

4. The petitioner was convicted by learned Special MCOCA Court by order dated 02.05.2018. He has been convicted for the offences punishable under Sections 302, 120, 120-B of Indian Penal Code (for short "IPC") and under Sections 3(1)(i), 3(2), 3(4) of the Maharashtra Control of Organised Crime Act (for short "MCOCA") and has been sentenced to suffer imprisonment for life. At the time of filing furlough leave application, he had completed about 4 years of conviction period and he was eligible for a furlough leave of 28 days. His earlier application came to be rejected on 29.04.2020, as a negative police report was given. He had challenged the said order by filing an appeal before respondent No.1. The said appeal has been rejected by respondent No.1 on 17.03.2021 on the ground that he can abscond, can threaten the witnesses. In fact, the jail authorities had certified that his behaviour in jail was good, still respondent No.1 has upheld the adverse report given by the police. He also submits that his co-accused Anil Bhanudas Waghmode, who

was also convicted in the same offence in the same case has been granted furlough leave twice by this Court, Bench at Nagpur. One more accused i.e. Ajit Chandrakant Rane was also given furlough leave in the writ petition by this Court, Bench at Nagpur. Further, in Criminal Writ Petition No.556 of 2020 accused Mohd. Sagir Mohd. Bashir Chauhan was granted furlough leave of 28 days.

5. Learned Advocate for the petitioner has submitted that the applicant is completing all the eligibility criteria for furlough leave and many accused persons who have been convicted under MCOCA have also been granted furlough leave by the various Benches of this Court. Therefore, the conviction of the petitioner under MCOCA cannot be considered as a barrier. Further, both the authorities i.e. the Deputy Inspector General of Prison as well as Inspector General of Prison have unnecessarily relied on the negative police report. In fact, there was no material before them or even before the police to give such negative report. When similar point was raised in some of the petitions seeking furlough leave, it has been observed that the apprehension in the report cannot be said to be well founded. Mere apprehension is not sufficient to deny the otherwise entitlement of a convict. He, therefore, prayed for release of the petitioner on furlough leave and the petitioner is ready to abide by the terms.

6. Per contra, the learned APP submitted that in view of reference made by the Division Bench of this Court in Writ Petition No.1512 of 2020 vide order dated 18.01.2021, the question under reference was "whether the circumstance that the prisoner is behind bars for offence under provisions of MCOC Act can be considered against him, in view of the furlough leave rules and whether that can be treated as exception, like other specific offences mentioned in Rule 4". The full Bench of this Court decided the said reference on 06.05.2022 in ***Mohd. Raees s/o Shahzade Ansari Vs. The State of Maharashtra and Ors, [Writ Petition No.1518 of 2021]*** and it was held that there is no conflict of the decisions in Writ Petition No.1512 of 2020 and 3011 of 2021. However, the basic fact remains is that the offence under MCOCA is serious and it would be involving a habitual prisoner or offender. Rule 4 of the provisions of the Prisons (Bombay Furlough and Parole) Rules, 1959 gives entitlement for furlough leave to certain category of prisoners only. On the facts of the case, in both the cases, it was held that those prisoners in those cases were entitled for the furlough leave and the said subject is still pending. Learned APP has taken us through the decision of this Court in Criminal Writ Petition No.1512 of 2020 in which certain observations about how to consider the seriousness of the offence has been made. Learned APP further submitted that the fine amount that has been imposed

on the petitioner has not been deposited by him and if he remains absconding, then it will create problem. The fine amount in total, that has been imposed upon him, is Rs.5,00,000/-. Learned APP has in fairness produced the copy of the order passed in Criminal Writ Petition No.234 of 2019 (Ajit Chandrakant Rane Vs. Deputy Inspector General of Prison (East) Region, Nagpur and another), on 02.05.2019, wherein the said accused was allowed to enjoy furlough leave of 28 days.

7. The first and the foremost fact that is required to be considered is that in the judgment and order of the full Bench in ***Mohd. Raees (Supra)*** it has been specifically observed in paragraph No.10 that "Undisputedly, there is no decision in the field which holds that Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959, excludes the prisoners who have been convicted under the provisions of MCOC Act for being eligible for furlough or in other words, the circumstances that the prisoner is behind bar for offence punishable under provisions of MCOC Act can be considered against him or that, the said circumstances can be treated as exception, like offences mentioned in Rule 4." There is also a reference to Notification dated 08.05.2020 issued by the Government of Maharashtra to amend the Prisons (Bombay Furlough and Parole) Rules, 1959 and it indicates that the directions

shall not be applicable for convicted prisoners for several offences. However, it is to be noted that the date of conviction of the petitioner is 02.05.2018. The full Bench has also taken note of the decisions in respect of the convicts who have been convicted in MCOCA yet were released on furlough leave and then has arrived at a conclusion that the decisions have been taken on the facts of the case. Here, in this case, the petitioner has produced a copy of the order granting furlough leave to Anil Bhanudash Waghmode by this Court, Bench at Nagpur in Criminal Writ Petition No.446 of 2019 decided on 19.07.2019 and Criminal Writ Petition No.546 of 2021 decided on 25.08.2021. Learned APP is not disputing the fact that he was the co-accused of the petitioner. Under such circumstance, we are also of the opinion that the application of the petitioner for granting furlough leave would not have been rejected on the ground that he has been convicted for committing offence under MCOC Act.

8. As aforesaid, the decisions have also been given in which the petitioners, though convicted under MCOC Act, have been given furlough leave.

9. The point of non payment of fine has been raised by learned APP. Certain orders by this Court have been produced on record wherein the Co-ordinate Bench had refused to grant any relief in view of huge fine amount remaining unpaid. As regards this point

is concerned, the first and the foremost fact to be noted is that in the Code of Criminal Procedure, the procedure is prescribed as to how fine can be recovered. The question of recovery of fine would arise after the substantial sentence has undergone. Till then if the accused does not pay the fine amount, then the in-default sentence will start running. No doubt, the warrants for the recovery of amount can be issued prior to that, but practically there will not be a recovery in a sense that such accused would be in jail at that time. Further the purpose for which the parole and furlough rules have been made would get frustrated, if payment of fine amount is made a condition precedent for grant of such leave. The furlough and parole leaves to the inmates are progressive measures of correctional services. This is so observed in Notification dated 16.04.2018 of the Government of Maharashtra while framing Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018. It gives the objectives of releasing the prisoner, which 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 and (d) To enable him to develop constructive hope and active interest in life. When it comes to high amount of fine, then it would be practically negativating the chances of release of the inmate on leave, if such condition precedent about the

payment of fine is imposed.

10. The record would show that the application as well as appeal of the petitioner was rejected on the ground that there is possibility of getting the petitioner absconding. He is connected to a notorious gang. Possibility of threatening the informant and witnesses cannot be ruled out. It can be said that the said negative report by the police was not on sound foundation. Under the above circumstance, we are of the opinion that the petitioner is entitled to be released on furlough leave for 28 days as per rules. Hence, the following order is passed :-

ORDER

- i) The writ petition stands allowed.
- ii) The impugned orders dated 17.03.2021 and 29.04.2020 passed by respondent Nos.1 and 2 rejecting the furlough leave application of the petitioner stand quashed and set aside.
- iii) 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 rule within a period of one week from the date of

receipt of this order.

- iv) It is made clear that the bond amount of surety should be reasonable.
- v) Rule made absolute in the above terms.
- vi) Parties to act upon an authenticated copy of this order.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm