

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO. 984 OF 2022

Manik Anandrao Patil
(Convict No. C/260)
Age 45, Occ. Nil,
R/o. At present Visapur
Open District Prison,
District Ahmednagar.

.. Petitioner.

VERSUS

- 1] The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai – 400 032.
 - 2] The Additional Director General of Police
& Inspector General of Prisons & Correctional
Services, Pune,
 - 3] The Deputy Inspector General of Prisons,
(Western Region), Yerwada,
Pune- 6.
 - 4] The Superintendent
Visapur Open District Prison,
Visapur, Dist. Ahmednagar.
- .. Respondents.

Advocate for petitioner : Ms. Sharda P Chate
APP for respondent/State : Mr. S.J. Salgare.

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

DATE : 26th September, 2022.

JUDGMENT [PER RAJESH S. PATIL,J] :-

1. The present criminal writ petition is filed for setting aside the order dated 14.6.2022 passed by Deputy Inspector General of Prisons (Western Region) Pune-6 and further for grant of furlough for 28 days as per rules.
2. It is the case of the petitioner who is at present in Visapur District Open Prison, Dist. Ahmednagar that he is entitled to enjoy all the rights and privileges ensured unto him by the constitution. The petitioner has stated that he is convicted by the learned District Judge – 2 and Additional Sessions Judge, Islampur for the offence punishable under Section 302,143, 147, 148, 452 of IPC and vide judgment and order dated 29.7.2013 alongwith fine of Rs.75,000/-, in default of fine, to suffer 8 months additional sentence. The petitioner at present is undergoing the sentence of imprisonment of life at Visapur Open District Prison, Dist. Ahmednagar.
4. During the conviction period, the petitioner preferred emergency Parole Application for 45 days before the Deputy Inspector General of Prison, Western Region, Yerawada, Pune in view of the notification dated 8th May, 2020 issued by the Home Department Mantralaya, Mumbai.
5. However, due to the sudden outbreak of Covid pandemic situation and pursuant to various circulars issued by the Government as regards release of prisoners, the petitioner also applied for Parole on the ground of covid pandemic. The petitioner was released by order dated

13th May, 2020 during the covid period on Parole. During parole leave from 28.8.2020, non-cognizable offence bearing No. 0921/2020 for the offence under Section 504, 506 r/w. 34 of IPC was registered by Islampur Police Station against the petitioner and his family members pursuant to the complaint filed by Vijay Patil on the ground of alleged verbal abuse and threat by the petitioner due to some financial disputes existing prior to grant of leave to the petitioner.

6. The Superintendent of Visapur Open District Prison, received a letter dated 14.12.2020 from the Sub-Divisional Officer, Islampur, District Sangli informing therein the registration of non cognizable offence against the petitioner as mentioned above. Pursuant to which, the Superintendent of Visapur Open District Prison terminated the leave of the petitioner vide order No. 94 of 2021 dated 12.1.2021. The petitioner was informed vide letter bearing No. 235 of 2021 dated 16.1.2021 to surrender back to Visapur Open Prison in view of the cancellation of the emergency parole leave granted to him by the Superintendent, Open District Prison, Visapur. The petitioner immediately surrendered back to the prison authorities on 21.1.2021.

7. The petitioner again submitted an application for emergency parole leave with a request to re-consider his leave application afresh in view of the false non-cognizable offence filed against him on 9th May, 2022. On 19th May, 2021, the respondent authority disposed of the leave application of the petitioner without giving any substantial reason for the same.

8. The petitioner on 18th May, 2021 again applied for furlough

leave. The said application of the petitioner was forwarded to the office of Deputy Superintendent General of Prisons on 12.6.2021, which is the sanctioning authority for furlough leave. A copy of the same was also forwarded to the office of the Sub-Divisional Officer, Islampur Division seeking their report.

9. On 5th July, 2021, the Superintendent, Visapur Open District Prison received adverse police report from the Sub Divisional Police Officer, Islampur Division, vide its letter dated 1.7.2021. The Deputy Inspector General of Prisons, Western Region, Yerwada, Pune-6, rejected the furlough leave of the petitioner vide order No. 1850 dated 20.7.2021 on the ground of adverse police report.

10. The petitioner, again, on 9th March, 2021 made an application seeking furlough leave and the same was forwarded to the sanctioning authority, namely, Deputy Inspector General of Prisons, Western Region, Yearwada, Pune-6. A copy of the same was also forwarded to the Sub-Divisional Officer, Islampur division, for police report.

11. On 10th May, 2022, the Superintendent of Visapur Open District Prison, received adverse police report from the Sub Divisional Officer, Islampur Division, Islampur, Dist. Sangli Vide letter No. 1080 of 2022 dated 2.5.2022.. The Deputy Inspector General of Prisons, Western Region Yerwada, Pune-6 rejected the furlough leave application of the petitioner by its order No. 1752 dated 14.6.2022 on the ground of adverse police report.

12. The petitioner being dissatisfied with the order dated 14.6.2022 filed an appeal against the rejection of furlough leave application before the appellate authority, namely, The Additional Director General of Police and Inspector General of Prisons and Correctional Services, Pune. However, till date, the appellate authority has neither rejected the application nor has granted any relief to the petitioner.

13. Hence, the petitioner has preferred the present Criminal Writ Petition under Article 227 of the Constitution of India so also under Section 155 of the Cr.P.C, thereby seeking grant of furlough leave for 28 days as per the Rules.

14. The petitioner also relied upon the judgment in the matter of *Sanjay Kisan Kadse Vs. State of Maharashtra and others, 2004(1) Bom.C.R. (Cri.) 758* and in the matter of Shaikh Ashpak s/o. Shaikh Hassan Vs. State of Maharashtra (Criminal Writ Petition No. 104 of 2018).

15. The learned APP, appearing for the respondent, on the other hand supported the impugned order. He submitted that the authorities have rightly rejected the application, as there is an adverse report in respect of the petitioner and hence this Court should not entertain the present Criminal Writ Petition.

16. The prosecution has filed affidavit in reply on behalf of respondent Nos. 3 and 4 and one Mr. Prakash Pardeshi working as I/c. Superintendent, Visapur District Open Prison, Visapur, Taluka Shrigonda,

Dist. Ahmednagar; thereby opposing the present writ petition for grant of furlough. The main ground in the affidavit in reply is adverse police report against the petitioner and the previous order of rejection passed against the petitioner.

17. We have carefully considered the documents on record. Perusal of the impugned order reveals that the application for furlough has been rejected on four grounds :-

- (i) Adverse Police Report;
- (ii) If the petitioner is released, there will be threat to the life of the complainant, who has filed NCR against the petitioner when the petitioner was on parole leave. The said police officer and the petitioner had indulged in land dealings and the police were not returning the money to the petitioner;
- (iii) Furlough is not a right of the detenue.
- (iv) As per Government Notification dated 16.4.2018, Rule 4(4), if there is adverse report then furlough cannot be granted.

18. This Court, in the matter of Sanjay Kisan Kadse (supra) has held in para. No.4 as under :-

“We have considered the contentions canvassed by the learned respective Counsel for the parties. The Competent Authority while considering the application for furlough leave is required to pass an order keeping in view the contingencies mentioned in Rule 4 of the Prison(Bombay Furlough and Parole) Rules, 1959. In Rule 4, circumstances are enumerated when Competent Authority can refuse furlough leave. It is no doubt true that sub-rule (4) contemplates the prisoner whose release is not recommended in Greater Bombay by the Commissioner of Police and elsewhere by the District Magistrate on the ground of public peace and tranquility, shall not be granted

furlough leave. This ground must find place in the police report and Competent Authority must be satisfied on the basis of such ground mentioned in the police report that if the prisoner is released on furlough leave, that would create problem so far as public peace and tranquility is concerned. It is also true that if persons, who have been examined by the prosecution as prosecution witnesses in the trial, express apprehension that if prisoner is released on furlough, their lives and properties would be in danger, the Competent Authority in such situation, required to assess as to whether the conflict which is likely to occur between these witnesses and the prisoner, if he is released on furlough, would result in causing breach of public peace and tranquility on the basis of facts and circumstances involved. Mere opposition to release of the prisoner by the witnesses on the ground of likelihood of harm simplicitor would not be sufficient to deny furlough leave the prisoner.”

19. In the present case, there is nothing on record to suggest that if the petitioner is released on furlough leave there would be threat to the witnesses or that there would be problem in respect of public peace and tranquility. Merely because a Non cognizable case is registered against the petitioner cannot be a ground for rejection of his application. The basis for arriving at the conclusion that there would be problem in respect of peace and tranquility is not mentioned in the report. It is merely stated that there is a possibility of threat to the life of the witnesses because petitioner – Manik Patil and other accused are notorious persons and they have created a feeling of terror in the city of Islampur. On what basis this conclusion is arrived at, is not stated in the order.

20. Considering the aforesaid discussion, we are inclined to allow the application. Hence, we pass the following order :-

- (i) Criminal writ petition is allowed in terms of prayer clause (b).
- (ii) The petitioner be released on furlough leave for a period of 28 days from the date of release, as per Rules. The petitioner is directed to visit Police Station, Islampur, Dist. Sangli twice a week during his stay at Islampur and surrender before jail authorities on or before completion of period of twenty eight days. If the petitioner fails to surrender as directed, the jail authorities are directed to take appropriate steps forthwith to apprehend him.
- (iii) Writ petition stands disposed of accordingly.

(RAJESH S. PATIL, J.)

(SMT. VIBHA KANKANWADI, J.)

grt/-