

4. In March 2019, Petitioner applied for furlough leave to the competent authority. His application was forwarded to D.I.G. (Prison) at Aurangabad and Superintendent of Police (**for short 'S.P.'**), Nandurbar as his Police Station is at Sakri, Dhule. Remarks were called from the said authorities. On 18.11.2019 S.P. Nandurbar furnished his remarks in respect of Petitioner giving a negative feedback. This letter was received by the D.I.G. office for consideration. D.I.G. (Prison) considered Petitioner's application and remarks furnished by S.P. Nandurbar and rejected Petitioner's leave application on the ground that he was not suitable for release on furlough leave in view of the provisions of Rule 4(4) read with Section 37 of Prison Manual, 1979.

5. Being aggrieved Petitioner appealed to the Additional D.G.P. (Prison) and I.G. (Prison). The said Authority rejected Petitioner's appeal for furlough leave Application after considering the same on the basis of Rule 4(4), Rule 4(20) read with Section 37 of the Prison Manual. Both orders of rejection are appended to the affidavit-in-reply of Respondent.

6. Hence the present petition before us.

7. In the meanwhile, Petitioner became entitled to a apply for fresh furlough leave in the year 2021. Hence, he once again applied and his application was forwarded to D.I.G. (Prison) and the concerned Police Station in Nandurbar for obtaining remarks. Records

indicates that S.P. Nandurbar has vide his letter dated 04.05.2021 furnished a negative feedback about the Petitioner by assigning the reason that he was not suitable for availing furlough leave. Hence, D.I.G. (Prison) once again has rejected Petitioner's Application.

8. Perusal of the rejection orders passed by the Additional D.G.P. (Prison) and I.G. (Prison) show that the said orders have been passed mechanically. Record indicates that in the year 2019 i.e. on 10.04.2019 and 18.11.2019 the reports given by S.P. Nandurbar were favourable to the Petitioner for grant of furlough leave. However, perusal of letter dated 18.11.2019 reveals that mother of the deceased in Sessions Case No. 38 of 2016 (C.R. No. 5/2016) in which Petitioner is convicted, has recorded her statement with the police stating that Petitioner is their relative and if he is released on furlough leave, he may cause harm to them.

9. In the above backdrop, it is pertinent to state that Respondent-State followed the Prison Manual and earlier notification dated 16.04.2018 while rejecting Petitioner's application for furlough. However, recently the State has issued a fresh Circular bearing No. 7/7/31 dated 17.08.2022 wherein, it is now categorically stated that rejection of application seeking furlough/parole leave cannot be done/should not be done mechanically and it shall be based upon furnishing objective reports after taking into account the past record of the prisoner, his earlier conduct and offences etc. The Circular further

states that, such reports ought not to be furnished merely on the basis of apprehension of possibility of the Petitioner committing an offence.

10. Without dilating further on this issue, in the facts and circumstance of the present case, we are of the considered opinion that Petitioner's application for furlough leave should be re-considered by the Competent Authority in the light of Circular dated 17.08.2022 and the same be decided afresh by the Competent Authority within a period of 4 weeks from the date of receipt of this order.

11. Registrar (Judicial) of this court is directed to convey a copy of this order to the concerned Competent Authority and the Superintendent of Jail where Petitioner is lodged. The Superintendent shall give a copy of this order to the Petitioner.

12. Needless to state that the rejection orders passed by the Competent Authority and the Appellate Authority which are been alluded herein above stand set aside. It is made clear that Petitioner's original Application and fresh application seeking grant of furlough leave stands revived and restored before the Competent Authority for consideration in terms of circular dated 17.8.2022.

13. With the above directions, Writ Petition is partly allowed and disposed of.

[MILIND N. JADHAV, J.]

[A.S. GADKARI, J.]

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