

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.995 OF 2022

Tushar Thanaji Nimhan
Vs.
The State of Maharashtra

... Petitioner

... Respondent

Mr. Karan Gajra, a/w Sanchita Sontakke a/w Digvijay Kachare i/by
Mr. Asmit Agarwal for the Petitioner.
Mrs. S. D. Shinde, APP, for Respondent-State.

**CORAM : PRASANNA B. VARALE &
S.M. MODAK, JJ.**

DATE : 07th April, 2022

P.C. :

1. Heard Mr. Karan Gajra, the learned advocate for the Petitioner, and Mrs. S. D. Shinde, the learned APP for the Respondent - State.

2. The Petitioner is under going sentence in Yarwada central prison for the offences punishable under Sections 147, 148, 452, 302, 307, 427, 504 read with 149 of the Indian Penal Code and under Section 3 read with 25 of the Arms act and under Section 37(1)/135 of the Bombay Police Act. He was convicted by Court of Additional Sessions Judge, Pune on 19th July, 2019 as accused No.2. His request for release on furlough leave appeal was rejected by the Additional Inspector

General of Prison as per the order dated 24th March, 2021. It was for 2 reasons:-

- i) When the Petitioner was under trial prisoner, he got released from jail on the basis of forged bail documents and separate offence bearing No.659 of 2014 under Section 224 read with 34 of Indian Penal Code was registered against him. He was convicted for 1 month and a fine.
- ii) Secondly, his performance in the jail is not satisfactory.

They have quoted Rules 4 (6) and 4 (10) of Maharashtra Prison (Bombay Furlough & Payroll) Rule 1959.

3. It is submitted on behalf of the Petitioner that he has already undergone sentence for that offence under Section 224 of IPC and the competent authority was not justified in considering it as a ground for rejection of furlough leave.

4. Learned Advocate for the Petitioner relied upon judgment in case of ***Ramdas Trambakrao Wanve Vs. The Deputy Inspector General of Prisons and Anr.***¹, ***Miyakhan Bhurekhan Vs. State of Maharashtra and Anr.***² and ***Arun Gulab Gawali Vs. Deputy Inspector General***³. As against this learned APP relied upon the provisions Rule 4 (6) and Rule 4 (10). Whereas it is submitted by way of reply on behalf of

1 Criminal Writ Petition No.787 of 2016, decided on 05.01.2017

2 (2006) 3 AIR BOM R 346

3 Criminal Writ Petition No.112 of 2016, decided on 02.03.2016

Petitioner that Rule 10 may not be applicable, because when the Petitioner has escaped from the jail, he was not on parole or furlough leave but an under trial prisoner. It is also submitted for that act he has already undergone sentence.

5. We have read the observations in the judgments relied upon on behalf of the Petitioner. The learned APP also made an attempt to oppose the request for the reason that the Petitioner is convicted under Section 302 and as such he is not entitled for furlough leave until he has undergone 3 years of actual imprisonment. It is countered by Petitioner by submitting that the period undergone as under trial prisoner is also required to be considered. It is true that the purpose of furlough leave is to give an opportunity to a convict accused person to meet his relatives and to meet the members of the society.

6. Petitioner has undergone the sentence for an offence under Section 224 of IPC. Petitioner need to be give an opportunity to meet his relatives. Probably after return, his conduct in jail may improve. Such apprehension can be taken care by imposing conditions. Hence, we are inclined to allow the Petition. Hence following Order :-

ORDER

(i) Writ Petition No. 995 of 2022 is allowed.

(ii) Respondent No.1 State of Maharashtra through the Deputy Inspector General of Prison is directed to release the Petitioner – convict No. C/12668 on furlough leave as per the rules subject to following conditions:-

- i) Petitioner to furnish surety for an amount of Rs.25,000/- to be furnished before the jail authority.
- ii) The Petitioner is further directed to give attendance to local Police Station on every Monday and Thursday at 10 A.M. to 12 noon.
- (iii) He is directed not to indulge in any activity, thereby contravening provisions in law and he is directed to return to the jail in time.
- iv) The Petitioner should not give threat the witnesses.

(S.M. MODAK, J.)

(PRASANNA B. VARALE, J.)