

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

WRIT PETITION NO.996 OF 2022

Chetan Thanaji Nimhan	... Petitioner
Vs.	
The State of Maharashtra	... Respondent

Mr. Karan Gajra, a/w Sanchita Sontakke a/w Mr. Digvijay Kachare i/by Mr. Asmit Agarwal for the Petitioner.
Mr. J. P. Yagnik, APP for Respondent-State.

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

DATE : 07th April, 2022

P.C. :

1. The issue involved in this Petition, whether the Petitioner is entitled to be released on furlough leave. He is convicted prison in Sessions Case No.652 of 2013 passed by Additional Sessions Judge, Pune. He was accused No.3. There was in all 4 accused persons. He was convicted for the offence punishable under Sections 147, 148, 307, 427, 504 read with 25 of the Arms Act and under Section 37(1) read with 135 of Maharashtra Police Act. The Additional Inspector General of Prison has rejected his appeal for grant of furlough leave as per order dated 19.03.2021 for following reasons:-

- (a) The behavior of the Petitioner in the jail is unsatisfactory.
- (b) While under Trial Prisoner, he got release from jail by preparing forged surety papers.
- (c) He was convicted in CR No.659 of 2014 under Section 224

read with 34 of the Indian Penal Code for one year and fine amount.

- (d) There is a possibility that the Petitioner if released on furlough will be a threat to witnesses.
- (e) He was having criminal past. Two offences were registered against him apart from two offences for which he is convicted.

On this background he had come to this Court.

2. Heard Mr. Karan Gajra, the learned advocate for the Petitioner, and Mr. J. P. Yagnik, the learned APP for Respondent-State.

3. Learned advocate for the Petitioner relied upon Judgments 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. The Learned APP invited our attention to the provisions of Rule 4 (4), Rule 4 (6), 4 (10) and 4(20) of Maharashtra Prison (Bombay Furlough & Payroll) Rule 1959. Learned APP also invited our attention to rule 10 of the said rules and according to him the life convict cannot be released on furlough, unless he has completed 3 years of actual imprisonment. Whereas according to Petitioner if his under trial period

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

is counted, he has completed more than 3 years.

4. Mere apprehension that if Petitioners after release will be threat to witnesses is illogical. Even after release the Petitioner is not likely to return is mere apprehension. There is no case that he was earlier released on furlough/parole. Ultimately furlough is not the matter of right and it does not depend upon happening of an event just like parole. When a convict has undergone a particular sentence, he can ask for furlough leave. The incident of release from jail on the basis of forged documents has been tried and the Petitioner is convicted. Non recommendation by jail authorities does not prohibit the Court from allowing the prayer if court feels that he is entitled. Ultimately these various clauses are included in Rule (4) so as to give wider scope for jail authorities. Ultimately the jail authorities are the custodian of the prisoners. They are bound to be vigilant while dealing with prayers. But it is the job of the Court to balance the rights. So the authority has no unlimited right in refusing the request for furlough. By putting conditions the apprehension can be protected. We are inclined to ask the Petitioner to furnish surety for more amount, so that they can assure his return from jail. So subject to condition we are allowing the Petition. Hence the Order:-

ORDER

- I) The Writ Petition No.996 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/12669 on furlough leave for the period prescribed as per the rules subject to following conditions:-
 - i) Petitioner to furnish surety for an amount of Rs.50,000/- to the satisfaction of the authorities.
 - ii) The Petitioner to give attendance to local Police Station on every Monday and Thursday at 10 A.M. to 12 noon.
 - iii) The Petitioner should not give threat to the witnesses.
 - iv) He is directed not to indulge in any activity, thereby contravening provisions of law and he is directed to return to the jail in time.

(S.M. MODAK, J.)**(PRASANNA B. VARALE, J.)**