

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1691 OF 2022**

Ganesh Baliram Desai

...Petitioner

Versus

Deputy Inspector General of Prisons and anr.

...Respondents

.....

Mr. Milan Desai for the Petitioner.

Mrs. S.D. Shinde, APP for the State.

.....

**CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.**

DATED : 26 AUGUST 2022

P.C. :-

By this Petition, the Petitioner has challenged the orders dated 6 October 2021 and 27 December 2021 rejecting the furlough leave application and the appeal filed by the Petitioner.

2. The ground for rejection of furlough leave was that an adverse police report is given by the Assistant Commissioner of Police under the Prisons (Bombay Furlough and Parole) Rules, 1959 (Rule 1959). Since the report which was shown to us was not self-explanatory, on 5 August 2022, the following order was passed:

“ Both the original and appellate authorities have refused the furlough leave to the Petitioner based on the report of Mr. Suhas M. Patil, Assistant Commissioner of Police, Mumbai, which on the face is self-contradictory. The original and appellate authorities have mechanically accepted the report.

2. Mr. Suhas M. Patil will file an affidavit or remain present in the Court to explain his report, as we are unable to ascertain from the report as to what is the exact objection for not releasing the Petitioner on furlough leave. We are constrained to adopt this action as we are coming across series of orders of the authorities rejecting furlough leave without application of mind. The Affidavit to be filed by 19 August 2022. Stand over to 26 August 2022.”

The learned APP states that the concerned Officer has now superannuated and neither the learned APP nor the Officer who is present in the Court are able to explain the report. All that we can discern is complete non-application of mind in preparing the report.

3. Rule 8 of the Rules of 1959 deals with the procedure how application for furlough leave should be dealt with. Rule 8 (2A) casts a duty upon the Assistant Commissioner of Police to furnish his opinion with information which thereafter is placed before the jail authority. Therefore, the report of the Assistant Commissioner of Police under Rule 8 is the foundation for the jail authorities to consider whether release of the prisoner will be prejudicial to the law and order. The report thus must be prepared with care and sent alongwith necessary documents so that the jail authorities can arrive at an informed decision. Rule 8(5) also state that if the furlough is not recommended adequate reasons need to be furnished. Not only the reasons adequate but they should be discernible as what the Police

Authority while submitting the report mean to convey.

4. Since we had repeatedly come across such incomplete reports. We had called upon the the State to take remedial action. Thereafter, on 10 August 2022 a Circular is issued by the Director General of Police to all the concerned police authorities drawing their attention to file proper police report. This aspect is noted in detail the order dated 19 August 2022. Passed in Writ Petition No. 204 of 2022 (Faruk Ahmed Shaikh vs. State of Maharashtra and ors.) and connected Petitions.

5. Accordingly, the impugned orders dated 6 October 2021 and 27 December 2021 are quashed and set aside. The application filed by the Petitioner for furlough is restored to file. The jail authorities will call for a fresh report, to be submitted as per Rules 1959 and the circular dated 10 August 2022 and order passed in Writ Petition No. 204 of 2022.

6. The fresh decision will be taken within period of six weeks and informed to the Petitioner.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)