

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

CRIMINAL WRIT PETITION NO. 204 OF 2022

Faruk S/o. Ahmed Shaikh
Age : 37 years, Occ : Convict,
R/o. C/o. Javed Qayum Shaikh,
Plot No.31/1, E-ward, Samrat Colony,
Vikram Nagar, Kolhapur
At present Confined at Central Prison,
Kalamba, Kolhapur as Convict No. 7591 ... Petitioner

V/s.

1. The State of Maharashtra
Through I.G., Prisons, Pune
2. The State of Maharashtra
Through D.I.G., Prisons, Pune
3. The State of Maharashtra
Through Superintendent Central Prison.
Kalamba – Kolhapur ... Respondents

***AND
CRIMINAL WRIT PETITION NO. 704 OF 2022***

Saddam Hussain s/o. Najir Desai
Age : 30 years, Occ : Convict
R/o. C/o. 414, Main Road,
Vikram Nagar, Kolhapur
At present Confined at Central Prison,
Kalamba, Kolhapur as Convict No. 7592 ...Petitioner

V/s.

1. The State of Maharashtra
Through I.G., Prisons, Pune
2. The State of Maharashtra
Through D.I.G., Prisons, Pune
3. The State of Maharashtra
Through Superintendent Central Prison.
Kalamba – Kolhapur ... Respondents

AND
CRIMINAL WRIT PETITION NO. 972 OF 2022

Sarfaraz @ Aathra Rashid Shaikh
Age : 42, Occ.: Service
R/at. Shalimar Hill Park, Bhisimilla Manzil
3rd floor, Room No. 303, Lane No.8,
Sai Baba Nagar, Kondhawa (Khurd),
District : Pune - 48
At present lodged in Yerwada Central Jail
District – Pune ...Petitioner

V/s.

1. The State of Maharashtra
(At the instance of Sr. P.I. Kondhawa
Police Station, Pune)
2. The Deputy Inspector General of Police
Prisons, Western Division, Yerwada,
Pune – 411 006
3. Addl. Director General of Police and
Inspector General, Prisons Division,
Maharashtra State, at Pune ... Respondents

AND
CRIMINAL WRIT PETITION NO. 2104 OF 2022

Swapnil Sambhaji Khatpe
Age : 56 years, Occ.: Convict,
R/o. H.No.333, Katpewadi, Mulshi, Dist. Pune,
At present confined at Central Prison
Nasik Road as Convict No. 12676 ...Petitioner

V/s.

1. The State of Maharashtra
Through I.G. Prisons, Pune
2. The State of Maharashtra
Through D.I.G. Prisons, Pune
3. The State of Maharashtra
Through Superintendent Central Prison.
Nasik Road ... Respondents

AND
CRIMINAL WRIT PETITION NO. 206 OF 2022

Anil S/o. Sherbahadur Giri
Age : 36 years, Occu.: Convict,
R/o. 16/209, Ghodake Nagar,
Room No.11, Near Hanuman Mandir,
Takshshila Society, Malad (East), Mumbai
At present confined in Kalamba Central Prison,
Kolhapur as Convict No. 5586 ... Petitioner

V/s.

1. The State of Maharashtra
Through Inspector General of Prisons

2. Dy. Inspector General (Prison)
Central Zone – Pune
3. Superintendent of Jail,
Kalamba, Kolhapur ... Respondents

AND
CRIMINAL WRIT PETITION NO. 1692 OF 2022

Arvind Ashok Salvi
Age : About 33 years an Indian
Inhabitant having residence at
Room No. 1623, Kadamwadi, SRA Bldg.,
Hanuman Nagar, Kandivali (E),
Mumbai – 400 101 currently lodged
in Nashik Central Prison and having
Convict No. C-12759 ... Petitioner

V/s.

1. Deputy Inspector General of Prisons,
Central Region, Aurangabad
2. The Addl. Director General of
Prisons, Pune
3. The State of Maharashtra
4. The Superintendent of Jail,
Nashik Central Prison ... Respondents

AND
CRIMINAL WRIT PETITION NO. 1218 OF 2022
WITH
INTERIM APPLICATION NO. 1788 OF 2022

Nilesh Narayan Shedge @ Babloo
Age – 44 years, Occ.: Nil
R/o. Currently lodged at Nashik Road
Central Prison, Nashik as Convict No.11814 ... Petitioner

V/s.

1. The State of Maharashtra
2. Deputy Director General of Prisons
Central Department, Aurangabad
3. Addl. Director General of Police
and Inspector General of Police
Prison and Reformation, Pune ... Respondents

Mr. Rupesh A. Jaiswal for the Petitioners in WP Nos. 204/22,
206/22, 704/22 and 2104/22

Ms. Saili N. Dhuru i/b. Ms. Heena P. Suvarnakar for the Petitioner
in WP 972/22

Mr. Milan Desai for the Petitioners in WP 1692/22

Mr. Aniket Vagal for the Petitioner in WP 1218/22

Ms. A.S. Pai, P.P. with Mr. J.P. Yagnik, APP for the State in WP
204/22, 972/22, 704/22 and 2104/22

Ms. S.D. Shinde, APP for the Respondent – State in WP 206/22

Ms. M.H. Mhatre, APP for the Respondent – State in WP 1218/22

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

DATE : 19 AUGUST 2022

JUDGMENT (Per Nitin Jamdar, J.) :-

Rule in all these Petitions. Returnable forthwith. Respondents waive service. Taken for disposal.

2. By these Petitions, the Petitioners are challenging the orders passed by the Respondents rejecting their applications for furlough leave and the appeals filed by them. A common judgment is passed in these Petitions because the Respondent – Authorities have rejected the application for Furlough on two grounds common to all the Petitioners. These two grounds are that there is an adverse police report, and second, the surety given by the Petitioners is not satisfactory.

3. In Writ Petition No. 204 of 2022, the Petitioner had applied for furlough leave which was rejected on 13 October 2021 on the ground that the surety given by the Petitioner travels out of town for business and will not be able to control the Petitioner. Secondly, the police report stated the possibility of the Petitioner being angry with the Complainant and witnesses and creating a law and order situation. Therefore, he cannot be released on furlough leave. The appeal filed by the Petitioner was rejected by order dated 21 December 2021.

4. In Writ Petition No. 704 of 2022, the Petitioner had applied for furlough leave which was rejected on 13 October 2021 on the same grounds as in Writ Petition No.204 of 2022 that the surety given by the Petitioner travels out of town for business and will not be able to control the Petitioner. Secondly, the police report was that there was the possibility of the Petitioners being angry with the Complainant and witnesses and creating a law and order situation. Therefore, he cannot be released on furlough leave. The appeal filed by the Petitioner was rejected by order dated 21 December 2021.

5. In Writ Petition No. 972 of 2022, the Petitioner applied for Furlough leave, which was rejected by the Respondents by order dated 20 July 2021 on the ground that the surety furnished was improper. It was stated that the surety was in private service, and he is not the full owner of the house and is not competent to control the activities of the Petitioner, based on the police report received. The appeal filed by the Petitioner was rejected by order dated 4 October 2021.

6. In Writ Petition No. 2104 of 2022, the Application filed by Petitioner for furlough leave was rejected on the ground that the surety given was not satisfactory as the surety for service is outside the house during the day and will not be able to monitor and control

the activities of the Petitioner. Also, the police report has stated that if the Petitioner is released, a law and order situation may be created, and there could be a danger to the life of the Complainant and the witnesses. The police report was accepted, and the application for furlough leave was rejected by order dated 7 March 2022. The appeal filed by the Petitioner was rejected by order dated 24 May 2022.

7. In Writ Petition No. 206 of 2022, the application of the Petitioner for furlough leave was rejected on three grounds. Firstly, when the Petitioner was released on bail on 12 September 2014, he did not return in time and was brought back after 389 days. Secondly, the Petitioner is part of the gang; thirdly, the surety is not satisfactory. The application for furlough leave was rejected by order dated 12 June 2019, and the appeal of the Petitioner was rejected by order dated 4 February 2020. As regards the Petitioner being a part of the gang, the learned Counsel for the Petitioner pointed out that the Petitioner was acquitted of the earlier offence punishable under the Maharashtra Control of Organized Crime Act, 1999. Regarding the surety, the Respondents have stated that the surety is not satisfactory as the surety is the mother who stays as a tenant and will not be able to control the activities of the Petitioner.

8. In Writ Petition No. 1692 of 2022, the Petitioner's application for furlough leave was rejected by the Respondent on 6 October 2021. It was stated that the surety, the father of the Petitioner, being aged, would be incapable of controlling the Petitioner and the police report is that if released, the Petitioner would create a law and order situation. On this ground, the appeal was also rejected.

9. In Writ Petition No. 1218 of 2018, the application filed by the Petitioner for furlough leave was rejected by order dated 6 November 2018, which was confirmed by rejecting the Appeal on 6 January 2019. It was on the ground that the surety being the father-in-law of the Petitioner, would not be able to control the activity of the Petitioner, and there was an adverse police report that, if released, the Petitioner was likely to create a law and order situation.

10. The Prisons (Bombay Furlough and Parole) Rules, 1959, are framed in exercise of powers conferred by clauses (5) and (28) of the Prisons Act, 1894. These Rules regulate the grant of Furlough and parole. Furlough and parole leave to inmates are corrective measures. The object of releasing prisoners on leaves is to enable the inmate to maintain continuity in his family life and deal with family matters, to save him from the negative effects of continuous prison life, to enable them to develop self-confidence and to enable him to

develop constructive hope and active interest in life.

11. Rule 2 of the Rules of 1959 provides for sanctioning and appellate authority. Under Rule 3, eligibility for grant of Furlough leave to the prisoners and when a prisoner gets entitled for grant of Furlough is provided therein. Rule 4 states that all Indian prisoners whose annual conduct reports are good, except in certain categories, are eligible for furlough leave. The categories that are not eligible are specified therein. Such as, Rule 4(4) excludes the prisoners whose release is not recommended in the Police Commissionerate area by the Assistant Commissioner of Police and elsewhere by the Deputy Superintendent of Police on the ground of peace and tranquillity. Rule 2(20) excludes those prisoners who, in the opinion of police/prison authorities, are likely to jump Furlough. Various categories are mentioned in Rule 4, and it is not necessary for this order to refer to all of them.

12. Rule 6 states that Furlough is not to be granted without surety. This is the Rule which stipulates the requirement of surety, and it reads thus:-

“6. Furlough not to be granted without surety.

A prisoner shall not be granted furlough unless he can provide a suitable surety willing to receive him. Family members, relatives Or friends of the prisoner, if of good antecedents, may stand for him or the Member of local bodies, Police Patil or Registered Medical Practitioner of the home

town may if willing and acceptable also be allowed to stand surety. The surety chosen must be willing to enter into a surety bond as in 'Form A' appended to these rules for such amount as may be fixed by the sanctioning authority:

Provided that the sanctioning authority may dispense with the requirement for a surety where prisoners are confined in open prisons as defined in clause (b) of rule 2 of the Maharashtra Open Prison Rules, 1971."

Form A, as mentioned in Rule 6, is appended to the Rules and reads as under:-

*"Form A.
Surety Bond.
(See Rules 6,10 and 24)*

*I,inhabitant of hereby declare myself surety for..... prisoner..... No..... and give the guarantee that he shall duly observe the conditions of release on furlough/parole set out in Schedule *A' and shall appear himself before the Superintendent of Prison at..... on the expiration of the period of his release on furlough/parole and in case of his making default herein, I hereby bind myself to pay the Government of Bombay, the sum of Rs.....*

And I agree that the Government of Bombay may, without prejudice to any other rights or remedies of Government, recover from the said sum as an arrear of land revenue.

And I agree that any extension of time given to prisoner will not discharge me from my liability to pay the said amount.

Dated this day..... of 195

Signed by the abovenamed Surety in the presence of:

1.

2.

Signature of the Surety.

****Schedule A.***
(To be filled in)”

Thus, Form A contains Schedule A, which must be filled in. Rule 10 states that sanctioning authority shall grant Furlough to a prisoner subject to his executing a personal bond and subject to surety stipulated as per Form A.

13. Thus, concerning the furnishing of surety, the same is under Rule 6. Rule 6 only mentions the suitable surety who is willing to enter into a surety bond appended at Form A. Form A, which is reproduced above, does not give any particulars but only states that the conditions would be set out in Schedule A. Schedule A has to be filled in.

14. In a series of decisions in the Petitions that came before us, we found that surety furnished by the prisoners was rejected on frivolous and untenable grounds. Often the grounds were self-contradictory. Since we found no guidance in the Rules as to how to fill in Form A, we had called upon the State to apprise the Court as to whether any internal guidelines have been issued as to what are the conditions to be put in or they are filled in at will.

Therefore, on 15 July 2022, the following order came to be passed:-

“Heard the learned Counsel for the parties.

2. A common order is passed in these Petitions because the Respondent – Authorities have rejected the application for furlough on a ground which is common to all the Petitioners that is the surety given by the Petitioners is not satisfactory.

3. The Petitioners’ application to be released on furlough leave is rejected by the impugned orders. In some matters the surety is rejected on the ground that the sureties travels out of town for business and therefore they will not be able to control and monitor the activities of the Petitioners. Some times it is stated that the surety is not working and therefore, is not solvent. If the surety has to be solvent, the surety will have to work, and for that purpose, the surety will be out of the house for work. In some cases, the surety is rejected on the ground that the surety is working in private sector and/or he is a co-owner of the property and not a complete owner. It appears to us that the sureties are rejected on the ground which are seemingly contradictory to each other in different cases. If such wide latitude to take up grounds to reject surety is implied, it will lead to abuse of the same.

4. Rule 6 of the Maharashtra Prisons Rules, 1959 refers to the surety. This Rule in turn refers to a Form appended to the Rules. The Form has blank spaces to be filled in. Rule 6 does not stipulate any requirement more than suitable surety willing to receive the Petitioner. The surety bond must be executed as per the Rules and the Form appended to. Rule states that surety must be a family member, relative or friend of the Petitioner. Once

the power is structured by Rules, it cannot be interpreted in a manner that there is an absolute discretion.

5. There must be a policy laying down clear parameters as regards the satisfactory surety. For that purpose, it would be necessary that a reply is filed by the State of Maharashtra through Inspector General of Prisons. The reply will place on record if there are internal policy or guidelines under the Rules which specify what should be the contents of Schedule 'A' referred to in the surety bond Form 'A'. Reply should also specify whether the grounds which were referred to of the surety not being able to control the prisoner or that the solvent should not be stepping out of the house are permissible under the Rules and Regulations.

6. Let the affidavit be sworn by the Inspector General of Prisons personally or vetted by him.

7. Stand over to 29 July 2022. To be listed under the caption "For Directions".

Thereafter, during the hearing before us on 12 August 2022, the Additional Director General of Police and Inspector General of Prisons and Deputy Inspector General of Prisons remained present in the Court to apprise the steps taken by the authorities. On that date, the following order came to be passed:-

“Heard the learned Counsel for the Petitioner and learned Public Prosecutor.

2. Mr. Sunil Ramanand, Addl. DGP & IG, Prisons & Correctional Services, Pune and Mr. Yogesh Desai, Dy. IG of Prisons are present to apprise the Court of the

steps taken by the prison authorities in respect of the issues highlighted in the earlier orders. Mr. Ramanand informed us that a circular is issued by the Additional Director General of Police and Inspector General, Prisons & Correctional Services, Pune to the Divisional Commissioner (All), Prison Deputy Inspector General (All) and Jail Superintendent (All) bringing to their notice that surety is furnished by the prisoners in respect of furlough/ parole leave should not be rejected on untenable and frivolous grounds. The circular dated 11 August 2022 is placed on record. The circular refers to three such grounds and mentions that in the earlier circular 18 points have been listed. However, earlier circular mentions these 18 points is not placed on record. Mr. Ramanand states that a comprehensive circular dealing with all the points would be issued within a period of one week.

3. On the aspect of inadequate and incomplete police report submitted to the prison authorities to deal with on furlough/ parole leave applications, the learned APP has placed the circular issued by the Director General of Police on 10 August 2022 directing all concerned to submit police report with details and annexures for consideration of the prison authorities while dealing with the furlough/ parole leave applications. Mr. Ramanand states that the prison authorities will also issue a circular that in case any incomplete police is received, complete copy with details would be called for from the concerned police station and such incomplete and inadequate police report should not be made foundation for deciding the applications.

4. The learned PP states that the circular issued and those which will be issued within one week as above would be placed on record by way of an affidavit. The

learned PP also informs that the State Government is proposing to hold workshops for the concerned officers on the above issues.

5. If the authorities act as per the circulars issued, it would reduce needless litigation such orders give rise to. Expecting positive steps to be taken in this regard, as assured to us by the officers, we defer the hearing of these petitions to 19 August 2022.

6. By the next date, an affidavit with circulars be placed on record.”

On 19 August 2022, the affidavit of the Inspector General of Prisons was placed on record with a circular issued on 17 August 2022. It was stated in the affidavit that the sureties furnished in Furlough and Parole should not be disqualified based on trivial reasons. It is stated that a comprehensive circular was issued on 17 August 2022. The Inspector General of Prisons also stated that the circular dated 17 August 2022 and the earlier circular dated 17 July 2013 would be circulated amongst the concerned officers, and workshops will be held to apprise the concerned authorities.

15. Turning to the second ground of rejection, regarding the adverse police report, Rule 8 of the Rules of 1959 provides the procedure for how the application for grant of furlough leave has to be dealt with. Under Rule 8(2), on receipt of an application for Furlough, the Superintendent of prison forwards it to the concerned

Assistant Commissioner of Police for the Deputy Superintendent of Police, giving particulars specified therein. Under Rule 8(2-A), the Assistant Commissioner of Police/Deputy Superintendent of Police is requested by the Superintendent of Prisons to furnish along with his opinion information regarding the relatives of the prisoner with whom he intends to stay while on Furlough, their relationship and whether such relatives are willing to keep the prisoners on Furlough. As per Rule 8(2-B), the report from the Assistant Commissioner of Police/Deputy Superintendent of Police is called to forward the report to Assistant Commissioner/Deputy Commissioner. Rule 8(4) stipulates an enquiry, and as per Rule 8(5), if Furlough is not recommended, adequate reasons are to be given.

16. We came across several cases where the police report called for under Rule 8 was completely sketchy. On many occasions, they refer to the statements recorded. Every statement is not sent to the Jail Authorities. Based on such incomplete police reports, both the original and the appellate orders are passed rejecting the Furlough leave. Finally, on 15 July 2022 in Writ Petition No.2205 of 2022, we passed the following order:

“Heard the learned Counsel for the parties. Taken up for disposal.

2. By this Petition, the Petitioner has challenged the orders dated 16 March 2022 and 25 May 2022, rejecting the application of the Petitioner for releasing the Petitioner on

furlough leave. The impugned orders are based on the police report bearing no. 374 of 2022 dated 24 January 2022, received from the Police Superintendent, Nandurbar. It is stated in the impugned order that as per this report if the prisoner is released on furlough, there is likelihood of breach of peace in the locality and therefore, since there will be disturbance to law and order, the Petitioner should not be released on furlough leave. This order has been confirmed by the Appellate Authority.

3. Perusal of the orders show that the police report, copy of which is placed before us, issued by one P.R. Patil, the Police Superintendent, Nandurbar has listed 7 points : first it is stated that the Petitioner if released would go and meet to his family; second point refers to his conviction; third refers to a statement of Corporator of the Municipal Council; fourth refers to a statement recorded by the surety given by the Petitioner; fifth refers to a statement that if the Petitioner is released, there is likelihood of breach of peace; then it is stated that if the Petitioner is released the possibility of injuries to the complainant and witnesses cannot be ruled out, and lastly it is stated that during the period of leave, the Petitioner has not committed any crime. These are one line statements.

4. With these sketchy one line statements, report is sent. The report does not give any details whatsoever, it does not state what were the recorded statements. Copy of the two statements recorded, are not even annexed. The non-application of mind starts here and is perpetuated upto the Appellate Authority. The original Authority has not called for the statements and they have simply produced this report and the Appellate Authority has simply confirmed the order.

5. The least the Police Superintendent could have done is to annex the statement to the report submitted to the authority. If it was not submitted, the authorities could have called for it. Why such obvious and glaring lack of material was not seen by two authorities, something that we were able to detect at the outset, begs the question. This cannot be the

manner in which application for furlough can be dealt with. Not only such orders prejudice the prisoners, it increases the burden on this Court. It also forces the Petitioner to approach this Court by spending financial resources or the State has to pay for the litigation through legal aid.

6. *For such complete non-application of mind on the part of Police Superintendent, Nandurbar, Respondent No.1 and Respondent No.2, we have no option but to quash the impugned order. We direct the Respondents to reconsider the application for furlough leave by the Petitioner to be decided within a period of four weeks. Order accordingly.*

7. *To inculcate the sense of application of mind and that such instance do not recur, we impose the costs of Rs.25,000/- on the State, which should be paid to the Legal Aid within a period of four weeks from today.*

Later on

8. *The matter was mentioned in the afternoon session by the learned P.P. who has placed on record the e-mail communications received by the Inspector General of Prison and Deputy Inspector General of Police (Prisons), stating that henceforth the police reports will be scrupulously scrutinized. Also the learned P.P. states that instructions will be given to the police authorities from whom report is called to annex the materials based upon which the report is prepared so that the jail authorities can form a proper opinion and if they are not been submitted, the authorities will call for details from the police. In light of this communication and the assurance given to us by the learned P.P. on behalf of the State, we recall the order of imposing costs."*

17. The learned Public Prosecutor stated that the State Government has taken up this issue, and the Director General of Police, Special Inspector General of Police has issued a circular on 10

August 2022 to all the concerned police personnel that the police report which is to be sent must be comprehensive and must give a final opinion with clear reasons and all the necessary papers must be sent. It was stated that even in respect of surety, stereotypical and frivolous reasons are given. This circular directs that all the authorities must send complete and proper police reports. The circular is placed on record by the learned Public Prosecutor. This fact is noted in the order dated 12 August 2022, reproduced above.

18. Thus, as regards the rejection of the surety, the Inspector General of Prisons has issued a circular on 17 August 2022. In respect of Rule 8(5), the Director General of Police has issued a circular on 10 August 2022. The learned Public Prosecutor states that in the light of these two circulars issued, the cases of the Petitioners as regards the two grounds of rejection, the surety and adverse police reports, would be re-examined. According to us, this should have been done by the authorities without the Court's intervention. The Rules of 1959 are evident in this regard, and though Parole and Furlough are not a matter of right, the authorities are not expected to adopt the approach of somehow rejecting the leave applications. Now that we note that the Authorities have taken the issue with seriousness and have issued administrative instructions to the concerned officers, we leave it as that.

19. Accordingly, we dispose of these Writ Petitions by quashing and setting aside the impugned orders. The furlough leave applications of the Petitioners be stand restored to file. The applications would be considered afresh by the Respondent – Authorities in the light of the statutory rules and the circulars now placed before us. The decision in respect of the Petitioners' furlough leave be taken by the original authorities within six weeks from the date the order is uploaded on the server. The Interim Application is also disposed of accordingly.

20. We make it clear that we have dealt with the rejection of Petitioners' applications only on the above two grounds and have not commented on the other grounds for rejection of furlough leave, if any, present in the Petitioners' cases.

21. Rule is made absolute in the above terms.

N.R. BORKAR, J.

NITIN JAMDAR, J.

Digitally signed
by JYOTI
PRAKASH
PAWAR
Date:
2022.08.30
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