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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1332 OF 2022

Aarif S/O Ayub Salar .. Petitioner

v/s.

The State of Maharashtra & Ors. .. Respondents

....

Mr. Rupesh A. Jaiswal, for the Petitioner.

Mrs. A.S. Pai, PP, for State.

....

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

DATE : 15 JULY 2022.

P.C:-

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

2. By this petition, the Petitioner is challenging the orders dated 11 February 2022 passed by Respondent No.1- the Inspector General of Prisons and the order dated 26 October 2021 passed by Respondent No.2 - the Deputy Inspector General of Prisons, rejecting the application filed by the Petitioner to release the Petitioner on furlough leave. The Petitioner was arrested on 22 November 2007. He was convicted by the learned Sessions Judge, Solapur by order

dated 3 June 2011 for offences under Section 302 of Indian Penal Code and is sentenced to undergo imprisonment for life. After having completed 13 years 6 months imprisonment, including remission of 14 years and 7 months, the Petitioner has applied for furlough leave, which is rejected by the impugned order. The impugned order is passed on three grounds. Firstly, that when the Petitioner was released on furlough in the year 2011, he had threatened the witnesses and the complainant and an FIR was lodged under Section 506 of Indian Penal Code. Secondly, the Petitioner is a hardened criminal whose release will affect law and order. Thirdly, that the Petitioner was released in the year 2012. He overstayed for 331 days and was arrested and brought back to the prison. Fourthly, there is an adverse police report against the Petitioner. The authorities, accordingly, stated that the Petitioner is not entitled to furlough leave and the impugned orders were passed.

3. As regards the incident of 2011 is concerned, the same has occurred a decade ago. Thereafter, the Petitioner was released next year thereof on furlough and, at that time, there is no such report of any untoward incident. On the ground of the Petitioner overstaying for 331 days, the impugned orders state that the Petitioner was arrested and brought back to the jail. The Petitioner has asserted that the Petitioner was not arrested and brought back, but he himself returned to the prison and he had valid reasons for overstay. He stated that the

fact that the Petitioner himself returned is not denied. The Petitioner has explained the reasons for delay in surrendering. Therefore, what remains is that the apprehension of the authority that the release of the hardened criminal will affect the law and order. The Petitioner was released on furlough in the year 2012, thereafter, period of decade has passed.

4. As regards the overstay of 331 days and invocation of Rule 4(10) of the Rules of 1959 is concerned, the learned Counsel for the Petitioner has relied upon decision of this Court in the case of *Satish Shankarrao Shinde vs. The State of Maharashtra*¹ (Criminal Writ Petition No.1535 of 2019 dated 26 November 2019 of Aurangabad Bench). The Division Bench has taken a view that Rule 4(10) cannot take away the right/facility of furlough in perpetuity on the ground of overstay. The facts of each case will have to be examined. Same is the view taken in the order passed in the case of *Arif @ Baba Ayub Salar vs. State of Maharashtra & Ors.*².

5. In the present case, while taking into consideration the factual situation of the Petitioner's overstay, the Respondent authorities have referred to the Petitioner's arrest and that he was brought back. This fact is not correct, as the Petitioner has voluntarily returned. This would make substantive change while forming an opinion based on

1 2019 CJ (Bom) 2287

2 Criminal Writ Petition No.794 of 2020 dated 17 December 2021.

facts and circumstances for invocation of Rule 4(10). According to us, the incident of 2011 would lose his relevance once the Petitioner was released immediately next year and did not commit any untoward incident. As regards the factum of overstay, it cannot be stated that it can permanently bar the Petitioner and also the facts of the case will have to be examined. Wrong fact has been taken into consideration while invoking Rule 4(10). The decision will have to be taken considering the correct facts as stated above.

6. Considering the matter, case is made out to quash the impugned orders. Accordingly, the impugned orders are quashed and set aside. The application filed by the Petitioner is restored to file. The original order be passed within period of four weeks from today and the order be communicated to the Petitioner.

7. The writ petition is, accordingly, disposed of.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)