

JPP

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

CRIMINAL WRIT PETITION NO. 2205 OF 2022

Komal w/o. Yuvraj Pardeshi

... Petitioner

V/s.

The State of Maharashtra and Ors.

... Respondents

Mr. Rupesh A. Jaiswal for the Petitioner

Ms. M.H. Mhatre, APP for the Respondent - State

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

DATE : 15 JULY 2022

P.C. :-

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.

N.R. BORKAR, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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by JYOTI
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Date: 2022.07.22
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