

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2400 OF 2022**

Aslam Babulal Shaikh

...Petitioner

Versus

The State of Maharashtra and ors.

...Respondents

.....

Mr. Kuldeep Patil a/w Saili N. Dhuru for the Petitioner.

Mr. Y.M. Nakhwa, APP for the State.

.....

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

DATED : 5 AUGUST 2022

P.C. :-

Heard learned Counsel for the parties.

2. By this Petition, the Petitioner has challenged the order dated 9 March 2020 refusing his application for furlough leave and the appellate order dated 19 March 2021.

3. The application of the Petitioner was rejected on two grounds that the Petitioner had committed an offence when on parole and secondly the apprehension that Petitioner if released there may be law and order issue. As regard the first ground of rejection, we have noted in our order dated 22 July 2022 that the Petitioner has been acquitted

from the offences. Therefore, the second ground in the impugned order survives for our consideration i.e., if the Petitioner is released on furlough, there is likelihood of altercation taking place between the Petitioner, Complainant and the Witnesses leading to another offence. For that purpose the original appellate authorities have referred report received from the police authorities. The learned APP has placed before us copy of the police report received along with the statement recorded by the police authorities. With the report statement of Shabbir Ahmed Shaikh, Mumtaz Haider Shaikh, Salman Haider Shaikh and Tanvir Hairder Shaikh have been recorded. These are relatives of deceased Haider Shaikh. All of these persons have stated that if the Petitioner is released there is a likelihood that the Petitioner will create trouble and Petitioner and his family members are dangerous persons.

4. The learned APP submits that this being the material, the authorities have rightly concluded that if he is released on furlough the Petitioner may commit another offence and therefore not entitled to furlough. The learned Counsel for the Petitioner submitted that Petitioner has never been released on parole or furlough before and he that committing an offence is hypothetical and if such ground is taken then no person will ever be released on furlough.

5. The witnesses and complainant have given their statement

voicing their apprehension that is because of the incident of the past. However, it is for the authorities to decide, whether on this apprehension Petitioner should be denied or granted the benefit of furlough. The authorities are not divested of their duty to analyze whether the apprehension of complainant and witnesses has substance or otherwise, more particularly in cases where the prisoner has never been released before. No doubt apprehension expressed by the complainant and witnesses would be one of the factor, but if it is made the basis with only reference to it, without any analysis, then in every such case the furlough leave could be denied, making the statutory provision nugatory. Therefore, the authorities should independently apply their mind to the facts of the case. Some of the facets, being for example, the circumstances in which the prisoner was convicted, the length of time since in custody and then decide whether if prisoner is released would lead a law and order situation. In this case, we also note in that it is almost six years since the incident for which Petitioner was convicted, has taken place.

6. As a result, the impugned orders are quashed and set aside. The application of the Petitioner for furlough leave is restored to the file of the Original Authority. The Original Authority will take into consideration all the relevant factors and then take a decision on the application made by the Petitioner. Let this exercise be done within period of four weeks from the date of order is uploaded on the server.

7. Writ Petition is accordingly disposed of in above terms.

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)