

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

WRIT PETITION NO. 4253 OF 2021

Mr.Akram Akil Shaikh

...Petitioner

vs.

The State of Maharashtra & Ors.

...Respondents

Mr.Aniket Vagal for Petitioner.

Ms.Sangeeta P. Shinde, APP for State.

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATED : 6 JANUARY 2022

P.C. :

. Heard learned Counsel for the Petitioner.

2. The Petitioner is before this court challenging the order dated 18 March 2021 whereby the competent authority rejected the appeal preferred by the Petitioner challenging the order dated 1 August 2020. The Petitioner is suffering his life imprisonment as Convict No.17855 in Yerwada prison and at present, he is lodged in Nashik Central Prison. The learned Sessions Judge, Srirampur by judgment and order dated 9 April 2018 in Sessions Case No.16/2016 passed the judgment of conviction and sentence against the Petitioner for commission of offences under Sections 302, 326 read 149, 143, 148, 504 read with 34 of IPC. The Petitioner submitted an application on 30 July 2020 for furlough leave to Respondent No.2. The aunt of the Petitioner shown her willingness to stand as surety for the Petitioner. While rejecting the application, the prominent reason

assigned is an opinion formed by the authority that in case the Petitioner is released on furlough leave, he may indulge in such an act causing the apprehension in the mind of the complainant and the witnesses or he may commit such an act causing apprehension of life to complainant and the witnesses. A negative report to that effect was submitted. Vide an order dated 9 December 2021, time was sought for by learned APP to file reply. Accordingly, reply is filed in this court through the Superintendent, Nashik Road Central Prison, Nashik. Now the affidavit reiterates the ground of rejection, i.e. an adverse police report. Report submitted to the Deputy Inspector General of Prison through the Superintendent of Police, Thane Rural dated 7 July 2020 is annexed to the affidavit in reply. It is useful to refer to certain facts reflected in the report. It is specifically stated in the report that the Petitioner convict is suffering his life imprisonment in Yerwada Prison Pune and this was the first occasion for the Petitioner to pray for furlough leave. Prior to this occasion, the Petitioner had not availed the leave. It is also stated in the report that aunt of the Petitioner Smt.Abeda Akil Shaikh, resident of Vihigaon, Taluka Shahapur, District Thane has shown her willingness to stand as surety for the Petitioner and she had already submitted undertaking to that effect on an affidavit. Her detailed statement is also recorded. The report further states that as the Petitioner is a resident of Srirampur and the complainant and the witnesses are the resident of the area under the jurisdiction of Srirampur Police Station, District Ahmednagar, as such it would be appropriate to call the opinion of that concerned Police station. Then it is further stated in the report that as the Petitioner had not availed leave prior to the present occasion, there are no adverse entries against the Petitioner. Now one fails to understand as to when on one hand, the report states that it was the first occasion for the Petitioner to submit an application and Petitioner being the

resident of Srirampur, it would be appropriate to call report from Srirampur Police Station, how an adverse opinion is formed by the concerned police authority of Thane Police Station to reject the application, to give a negative report against the Petitioner. This being the factual scenario, it was expected of the authorities to apply their mind and pass appropriate orders, but it seems that both the authorities, i.e. the Deputy Inspector General of Prisons, Yerwada, Pune and the appellate authority, the Additional Inspector General of Police, Pune, mechanically passed the order and rejected the application of the Petitioner for grant of furlough leave. As we are of the opinion that the authorities have committed an error in passing the rejection order, it can safely be said that the Counsel for the Petitioner made out the case for allowing the petition.

3. Accordingly, the petition is allowed by quashing and setting aside the order dated 18 March 2021 impugned in the petition. The Petitioner be released by grant of furlough leave to the Petitioner as soon as copy of the order of this court is received by the prison authorities. The Petitioner to report the prison as soon as the period of furlough leave expires. The Petitioner expressed his willingness to stay at Shahapur, District Thane. The Petitioner to report to Shahapur Police Station on 13 January 2022 as well as 20 January 2022 and obtain a certificate of attendance through the police station duly signed by the police station in-charge of Shahapur Police Station and submit the same to the prison authorities on his report after expiry of the furlough leave.

4. With these directions, the petition is disposed of.

5. Authenticated copy of the order be supplied to learned APP.

Leaned APP to communicate the order of this court forthwith to prison authorities.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)