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

CRIMINAL WRIT PETITION NO. 6032 OF 2021

Ganesh Devidas Shinde Alias Ganya ... Petitioner

Versus

The State of Maharashtra & Ors. ... Respondents

.....
Mr. Chaudhari M. Mujeebuddin for the Petitioner.

Mrs. A.S.Pai , APP for the Respondent -State.

.....
**CORAM : NITIN JAMDAR AND
ARUN R. PEDNEKER, JJ.**

DATED : 22 JULY 2022

P.C. :-

Heard learned Counsel for the parties.

2. The Petitioner is aggrieved by the orders dated 22 February 2021 and 23 June 2021 rejecting the application of the Petitioner for furlough leave and the appeal. The Petitioner was never released on parole or furlough earlier, except death parole under police escort. The Petitioner's application was rejected by the first authority on 30 November 2018 and by the appellate authority on 21 February 2019. The Petitioner filed Criminal Writ Petition No. 6181 of 2019, which was allowed observing thus :-

“8] As the petitioner has not been released since last several years, apprehension expressed by police authorities about his threatening complainant or witnesses cannot be accepted. Similarly, if the surety is found incompetent, he can be asked to furnish a proper surety. Not only this, the Police Authorities can also impose other terms and conditions to ensure that he does not abscond.

9] In view of this position, we quash and set aside the impugned orders and direct the concerned Authorities to grant the Petitioner furlough leave after imposing suitable terms and conditions, including condition of proper surety. The order shall be complied with within four weeks from today. Accordingly, we allow the Petition partly and dispose it of”.

3. By the impugned orders, the Petitioner’s application for furlough leave has been rejected. The reason given for rejection is that the Petitioner’s surety has given photocopies, however, he has not furnished necessary documents regarding employment. The impugned orders also states that the Petitioner is likely to abscond and would not return. This finding cannot be taken in light of the order dated 4th February, 2020, as the Division Bench has observed that since he has not been released earlier, likelihood of absconding would be a mere suspicion. Therefore, as per earlier order, all the authorities could have

done is impose suitable terms and conditions and ensure proper surety.

4. The learned Counsel for the Petitioner states that in view of this continuous litigation, the earlier surety is not willing and the Petitioner will give fresh surety. The petition is disposed of directing the concerned authorities to examine surety given by the Petitioner and consider the surety within parameters of the rules and pass necessary orders within three weeks of furnishing the surety.

5. We make it clear that examination of the surety in light of the earlier order of this Court is restricted to the viability of the surety and necessary terms and conditions.

6. The petition is disposed of in above terms.

(ARUN R.PEDNEKER, J.)

(NITIN JAMDAR, J.)