

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO.4558 OF 2022**

Bansi Kisan Logad

.....Petitioner

Vs.

The State Of Maharashtra & Anr.

.....Respondents

Mr. Kunal Pednekar i/by Aniket Vagal for the Petitioner.

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

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.
DATE : 16th DECEMBER, 2022.**

PC.:-

1) By the present Petition, the Petitioner a life convict, has impugned Order dated 18th July, 2022 passed by the Respondent No.4, Appellate Authority dismissing his Appeal and confirming the Order passed by the Competent Authority dated 21st February, 2022, rejecting his request to release him on furlough leave.

2) Heard Mr. Pednekar, learned counsel for the Petitioner and Smt. Mhatre, learned APP. Perused record.

3) It is an admitted fact on record that, the Petitioner is undergoing sentence at Yerwada Central Prison, Pune for conviction under Section 302 and other related Sections of the Indian Penal Code.

In the year 2021, the Petitioner had filed an Application for furlough leave for the year 2021. The Jail Authority therefore called for report from the local police station where the Petitioner was intending to reside when released on furlough leave.

That, the Assistant Police Inspector, Ambhora Police Station conducted an inquiry in the vicinity and submitted a report stating that, the Police have no objection if the Petitioner is released on furlough leave. The Deputy Inspector General of Prison, Western Region, Yerwada Pune-6 i.e. the Competent Authority by its Order dated 21st February, 2022 rejected the said Application on the grounds that, (i) when the Petitioner was released on COVID-19 Pandemic Parole Leave, a non-cognizable offence bearing No.731 of 2021 was registered with Nagar Taluka Police Station; (ii) when the Petitioner was on furlough leave, Petitioner created reign of terror in the village and (iii) the furlough leave is not a right of prisoner under Rule 17 of Chapter-XXXVII of the Maharashtra Prisons (Furlough and Parole) Rules, 1979.

4) Feeling aggrieved by the rejection of his Application of furlough leave, Petitioner preferred an Appeal before the Respondent No.4.

It is surprising to note that, the Respondent No.4 instead of considering the Appeal on its own merits, called for a fresh police report from the local police station. That, the Sub-Divisional Police Officer,, Ashti Sub-Division, thereafter submitted his report dated 17th June, 2022, stating

therein that when the Petitioner was released on COVID-19 Pandemic Parole Leave, he indulged into bickering with the villagers and used derogatory language, due to which reign of terror was spread in the said village. The police therefore submitted report that, the Petitioner may not be released on furlough leave.

The Appellate Authority, after taking into consideration the said report and the reasonings given by the Competent Authority, rejected the Appeal of the Petitioner by its impugned Order dated 18th July, 2022.

5) It is to be noted here that, there is no provision under the Furlough and Parole Rules to call for a fresh report by the Appellate Authority. The Appellate Authority supposed to consider the Appeal of the Petitioner on its own merits. According to us, calling for a fresh report from the local police in Appeal, amounts to exceeding jurisdiction by the Appellate Authority. It also appears to us that, the Appellate Authority while dismissing the Appeal of the Petitioner has placed its reliance on extraneous material which was not germane for deciding the Appeal.

6) It is to be noted here that, the Competent Authority in unnumbered paragraph No.2 had already recorded the said fact that, the Petitioner was released on COVID-19 Pandemic Parole Leave and he had created reign of terror in the vicinity of the said village. Despite the said fact, the local police had submitted a positive report for releasing the Petitioner on furlough leave.

Perusal of impugned Order dated 18th July, 2022, would clearly indicate that, the Appellate Authority at two places i.e. in paragraph No.3 and 6 has taken into consideration the same N.C.R. No.731 of 2021 registered with Nagar Taluka Police Station. It also appears to us that, the impugned Order passed by the Appellate Authority is passed in a mechanical manner and without considering the record of Petitioner.

7) In view of the above, we set aside the impugned Orders dated 18th July, 2022 passed by the Appellate Authority i.e. Respondent No.4 and dated 21st February, 2022 passed by the Competent Authority- Respondent No.3.

8) We direct the Respondent No.3 to release Petitioner on furlough leave for a period of 14 days for the year 2021.

It is made clear that, Petitioner will not be entitled for extension of furlough leave for further 14 days even if it is permissible under the Rules.

It is further made clear that, Petitioner will be entitled for filing Application for furlough leave for the year 2022.

9) Hence the following Order-

ORDER

- a) Impugned Orders dated 18th July, 2022 passed by the Appellate Authority, Respondent No.4 and dated 21st February, 2022 passed by the Competent Authority

Respondent No.3 are set aside.

- b) Petitioner be released on furlough leave on his furnishing PR bond of Rs.25,000/- with the same sureties which he had submitted for processing his furlough leave Application for the year 2021.
 - c) This entire exercise be completed on or before 31st December, 2022.
 - d) Petitioner be released on furlough leave from 1st January, 2023 till 14th January, 2023. Petitioner shall report to the Jail Authority on or before 11.00 a.m. of 15th January, 2023.
 - e) When released on furlough leave, Petitioner shall attend Ambhora Police station on every Tuesday and Friday between 10.00 a.m. and 11.00 a.m.
- 10) Petition is allowed in the aforesaid terms.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)

SANJIV
SHARNAPPA
MASHALKAR

Digitally signed by
SANJIV
SHARNAPPA
MASHALKAR
Date: 2022.12.22
19:14:05 +0530