

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 320 OF 2021

PETITIONER : Rahul S/o Ashok Shardul,
C-5566 Aged about 35 years,
Occu : Nil,
(Presently in Central Prison Amravati)

V E R S U S

RESPONDENTS : 1. State of Maharashtra,
through Deputy Inspector General
of Prison, Eastern Region, Nagpur.

2. Superintendent of Jail,
Central Prison, Amravati, Distt.
Amravati.

Shri Raju Kadu, Advocate for petitioner.
Mrs. N. R. Tripathi, Additional Public Prosecutor for respondent Nos.1
and 2.

**CORAM:- MANISH PITALE AND
G. A. SANAP, JJ.**

DATED :- 03/08/2022.

ORAL JUDGMENT : (PER MANISH PITALE, J.) :

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. By this petition, the petitioner has challenged order dated 19/10/2020 passed by respondent No.1, whereby an application for grant of furlough filed on behalf of the petitioner was rejected. The petitioner is undergoing sentence of life

imprisonment in pursuance of Judgment and order convicting him for offence punishable under Section 302 r/w Section 148 of the Indian Penal Code (IPC). On the date of passing of the impugned order, the petitioner had already undergone imprisonment for a period of 6 years, 5 months and 17 days.

3. Shri Raju Kadu, learned counsel appearing for the petitioner submitted that although alternative remedy in the form of appeal is available, since the impugned order displays non-application of mind and it is in the teeth of the relevant Rules, as well as policy of the State itself manifested in the Circular dated 25/10/2001, this Court may entertain and consider the present petition.

4. It is brought to the notice of this Court that the application for grant of furlough has been rejected, only on the ground of Rules 4(4) and 4(6) of the Bombay Furlough and Parole Rules, 1959. The two grounds being adverse police report and conduct of the petitioner not being satisfactory. A reference is also made in the impugned order to another proceeding, wherein the petitioner was an accused for offences punishable under Sections 326, 323, 324, 504 r/w Section 34 of the IPC.

5. According to the learned counsel for the petitioner, the aforesaid reasons are unsustainable and the same can be demonstrated by material available on record. It is further submitted that the Circular dated 25/10/2001 issued by respondent No.1 - State itself mandates that the applications for furlough ought not to be rejected for frivolous reasons and that the concerned authorities to take care in that regard. On that basis, it is submitted that the present petition deserves to be allowed.

6. Mrs. Tripathi, learned APP appearing for the respondents submitted that the petitioner could have availed the alternative remedy of filing appeal before the Appellate Authority. It is further submitted that adverse police reports and conduct of the petitioner are relevant factors for deciding such an application and therefore, no interference is warranted in the present case.

7. We have considered the material on record in the backdrop of the submissions made on behalf of the rival parties. Insofar as the alternative remedy is concerned, we find substance in the contention raised on behalf of the petitioner that if this Court was to peruse the impugned order, the reasons stated

therein do not appear to be sustainable, on the face of it and in such circumstances, this Court could certainly entertain this petition. Even otherwise, we feel that the petitioner is undergoing imprisonment at Central Prison, Amravati and it would be inefficacious for the petitioner to approach the Appellate Authority at Pune within 30 days from passing of the order. Therefore, we are of the opinion that the present writ petition cannot be thrown out, only on the ground of availability of alternative remedy. Even otherwise, as per settled law, the aspect of availability of alternative remedy and hesitation of the Writ Court in entertaining the writ petition on that ground, is a matter of self-restraint shown by the Writ Court and not a Rule of Law.

8. When the impugned order passed by respondent No.1 is considered on merits, we find that the only reason why the application for grant of furlough is rejected is adverse police report and conduct of the petitioner allegedly being not satisfactory.

9. Insofar as conduct of the petitioner is concerned, learned counsel for the petitioner brought to the notice of this Court a certificate dated 05/02/2019, issued by Chief Medical

Officer of Taloja Central Jail, Navi Mumbai, which certifies that the petitioner was trained under the said officer for special care and he took adequate care for hospital cleanliness, patient hygiene and overall hospital administration and further that the petitioner did accomplish the tasks given to him. It certainly indicates that the conduct of the petitioner was found worthy of appreciation by the said authority and therefore invoking Rule 4(6) of the aforesaid Rules does not appear to be appropriate in the case of the petitioner.

10. Insofar as adverse police reports are concerned, other than referring to such adverse reports, no other material was brought to the notice of this Court, as against the petitioner. It is undisputed that on the date of passing of the impugned order, petitioner had undergone imprisonment of 6 years, 5 months and 17 days.

11. The documents on record also indicate that reference made by the respondent No.1 to another criminal case involving the petitioner was misplaced for the reason that the petitioner stood acquitted in the said case.

12. Perusal of the Circular dated 25/10/2001, issued by the respondent No.1 - State shows that it is advised that the concerned authorities ought to take sufficient care to ensure that the application for grant of furlough / parole is not rejected on frivolous grounds. This appears to be in consonance with the specific amendment brought about in Rules, by introducing Rule 1(A) in the said Rules. The said Rule reads as follows :-

"1(A). Objectives :- Furlough and Parole leaves to inmates are progressive measures of correctional services. The objectives of releasing a prisoner on leave are :-

- (a) To enable the inmate to maintain continuity with his family life and deal with family matters,
- (b) To save him from evil effects of continuous prison life,
- (c) To enable him to maintain and develop his self-confidence.
- (d) To enable him to develop constructive hope and active interest in life."

13. The aforesaid objectives for grant of furlough and parole to inmates clearly indicates that these are progressive measures of correctional services and the emphasis is upon facilitating the inmates in not only developing self-confidence and having constructive hope and active interest in life, but to be able

to maintain continuity with his family life and for avoiding ill-effects of prison life.

14. If orders such as the impugned order are to be upheld, it would be running counter to the aforesaid objectives specifically enumerated in the aforesaid Rules.

15. In view of the above, we are of the opinion that the impugned order is unsustainable and that the application for grant of furlough moved by the petitioner ought to have been allowed.

16. Since the petitioner had already undergone sentence of 6 years, 5 months and 17 days in incarceration at the time of filing the application, he is entitled to furlough leave of 28 days.

17. Accordingly, the writ petition is allowed. The impugned order is quashed and set aside. The application for grant of furlough leave filed on behalf of the petitioner is granted.

18. It is directed that the petitioner shall be granted furlough leave of 28 days. He shall abide by all the requirements under the aforesaid Rules, including submitting bonds and providing surety to the satisfaction of the Competent Authority.

19. Accordingly, the writ petition stands disposed of.

[G. A. SANAP, J.]

[MANISH PITALE, J.]

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