

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL WRIT PETITION NO. 276 OF 2022

Sushil s/o Rambharose Bahuriya

Vs.

State of Maharashtra, Thru. DIG Prison (East), Nagpur and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. A.Y. Sharma, Advocate for petitioner.
Mr. S.S. Doifode, APP for respondents/State.

**CORAM : MANISH PITALE, &
VALMIKI SA MENEZES, JJ.**

DATE : 26.07.2022.

The petitioner is aggrieved by rejection of this application for grant of furlough, by order dated 21.01.2022 passed by the respondent No.1. The petitioner is undergoing sentence of rigorous imprisonment life for having committed offence under Section 302 of the Indian Penal Code. The petitioner was convicted on 07.10.2007 and he has continued to remain behind bars since then.

2. It is the case of the petitioner that the grounds on which his application for grant of furlough was rejected, are not sustainable, as per

settled position of law. According to Mr. Sharma, learned counsel appearing for the petitioner, there are three grounds on which the impugned order has been passed against the petitioner, firstly, that he had reported late on two earlier occasions when he was released on furlough, secondly, that he had suffered conviction under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, which disentitled him for grant of furlough and thirdly, that there was adverse police report and that the brothers of the victim had expressed an apprehension that the petitioner being of violent nature, it would not be appropriate to release him on furlough. It was submitted that none of the three grounds were sustainable.

3. Reliance was placed on the judgments of this Court in the case of *Satish Sankarrao Shinde Vs. The State of Maharashtra and ors.* 2019 ALL M.R. (Cri) 5247 and *Santosh s/o Sahebrao Nagargoje Vs. The State of Maharashtra and ors.*, 220 ALL M.R. (Cri) 3101.

4. As regards, the conviction under the NDPS Act was concerned, it was submitted that Rule 4(12) of the Prisons (Bombay Furlough and Parole)

Rules, 1959, would not come in the way of the petitioner for the reason for the offence under the NDPS Act, the petitioner was sentenced to suffer imprisonment for a period of four months, which he had already undergone. As regards the apprehension expressed about the petitioner being of violent nature and therefore, there being adverse police reports and statements given by the brothers of the victim, it was submitted that appropriate conditions could be imposed by this Court for ensuring that the petitioner does not enter the area where the brothers of the victim or the witnesses reside. The learned counsel for the petitioner, on instructions, submitted that while brother of the petitioner would stand surety, the petitioner would stay with his brother-in-law at Inzapur in the jurisdiction police station Sawangi Meghe in District Wardha, where he would report regularly to the satisfaction of the authorities.

5. On the other hand, learned APP submitted that this Court ought to take into account the fact that on two earlier occasions the petitioner had reported late and in on the second occasion he had to be arrested after a delay of 455 days. It is submitted that adverse police reports indicated that

the petitioner did not deserve release on furlough. His past conduct disentitles him for any such relief.

6. This Court has perused the impugned order and considered the contentions raised on behalf of the rival parties, in the backdrop of the material placed on record. The first ground for rejecting the prayer for grant of furlough in the present case is about the past conduct of the petitioner, inasmuch as when the petitioner was released on furlough in the year 2008, he had reported five days late and in the year 2010, he had been arrested and brought back, as a result there was delay of 455 days from the date when the duration of his furlough was over. Whether this alone could be a ground for rejection of subsequent application for grant of furlough has been dealt with by the Division Bench of this Court in the aforementioned judgments and the case of *Satish Shankarrao Shinde (supra)* and *Santosh s/o Sahebrao Nagargoje (supra)*.

7. The Division Bench has referred to the relevant Rules of the said Rules of 1959 and it has been held that only because the convict had reported late on earlier occasions for grant of furlough, that in

itself could not be a ground for rejecting the subsequent application.

8. Insofar as conviction under the provisions of NDPS Act is concerned, a perusal of Rule 4 (12) of the Rules of 1959 would show that despite such conviction a convict may be eligible for furlough after completion of stipulated sentence. The petitioner was convicted and sentenced for a period of four months under the provision of NDPS Act. There is substance in the contention raised on behalf of the petitioner he has already undergone the said period of sentence and that therefore, the application for grant of furlough could not have been rejected on that ground.

9. Insofar as the adverse police reports are concerned and apprehension expressed by brothers of the victim, on instructions, certain statements have been made before this Court as to the place where the petitioner intends to reside during the period of grant of furlough and that his brother would stand surety.

10. We are of the opinion that insofar as the first two grounds are concerned, the same are

unsustainable and to that extent, the impugned order cannot be sustained. But, insofar as the third aspect of the matter is concerned about the apprehension expressed by the brothers of the victim and the witnesses, who had deposed against the petitioner, the statement made on behalf of the petitioner as to place where he intends to reside with his brother-in-law, are matters that would require verification and examination by the concerned authority. Therefore, it would be appropriate to remand the matter back to respondent No.1 for proper consideration of the said aspect of the matter.

11. In view of the above, the impugned order dated 21.01.2022, is quashed and set aside. The matter is remanded back for fresh consideration to respondent No.1.

12. It is made clear that the application for grant of furlough shall not be rejected on the first two grounds referred to herein above. The respondent No.1 may take appropriate steps for verification of statements made on behalf of the petitioner and then pass appropriate order on the application for grant of furlough by taking into

consideration Rule 1-A of the Rules of 1959 that specify the objectives for grant of furlough.

13. The respondent No.1 shall decide the application within a period of two weeks from today.

[VALMIKI SA MENEZES, J.]

[MANISH PITALE, J.]