

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

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CRIMINAL WRIT PETITION NO. 362/2022

Rahul s/o Babanrao Bhad
Aged 24 years, Prisoner No.C/5889
Amravati Central Jail.

..Petitioner

versus

1) State of Maharashtra
Through its Secretary,
Department of Home
Mantralaya, Mumbai-400 032.

2) The Deputy Inspector General of Prisons
East Department, Nagpur.

3) Additional Superintendent of Police
Rural Amravati, Maharashtra.

4) Superintendent of Jail
Amravati Central Jail
Amravati, Maharashtra.

..Respondents

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Mrs.D.I.Charlewar, Advocate for the petitioner
Mrs.N.R.Tripathi, APP for the respondents

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CORAM : ROHIT B. DEO &
ANIL L. PANSARE, JJ
DATED : 14th September, 2022.

JUDGMENT: (Per: ANIL L.PANSARE, J.)

Rule. Rule made returnable forthwith. Heard finally.

2. The Respondent No.2-Deputy Inspector General of Prisons, East Department, Nagpur, vide order dated 1st November, 2021 has rejected the request of the petitioner to release him on furlough. The petitioner has assailed the said order in this petition.

3. We have gone through the material placed before us. We have also perused the impugned order and the relevant Rules, i.e. Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 {henceforth abbreviated to 'Rules of 1959'}. The petitioner has been convicted for the offence punishable under section 302 of the Indian Penal Code and is sentenced to suffer imprisonment for life (till remainder of his natural life) with fine of rupees five thousand and, in default, to undergo imprisonment for one year, vide judgment and order dated 20th January, 2021 passed by the learned Additional Sessions Judge, Amravati. The petitioner

is serving sentence at Amravati Central Jail (Maharashtra). He has undergone sentence for a period of three years eight months and nine days. The petitioner filed an application dated 10th August, 2021 for furlough leave to meet his family. His request has been turned down solely on the premise that he is likely to commit cognizable offence if released on furlough. The report of the Police Head Constable who had conducted the enquiry and which has been forwarded to Superintendent of Police, Amravati (Rural), would indicate that brother of the petitioner is willing to act as surety of the petitioner. The surety possesses necessary documents *viz.* domicile certificate, house tax receipts and undertaking etc. In a sense, his brother appears to be competent to act as surety. The surety is ready to take responsibility to monitor the movement of the petitioner and to surrender him to the prison after completion of the furlough leave. It further appears that the petitioner has not obtained any leave herein-before. The informant and witnesses to the crime for which the petitioner has been convicted do not reside in

village Hatoda where petitioner's relatives reside. Despite the aforesaid status, the Head Constable has filed an adverse report on the surmise that the petitioner may commit similar such offence if he is released on furlough because he has committed a serious offence.

4. The Rules of 1959, more particularly Rule 3, contemplates that a prisoner sentenced to imprisonment for a period exceeding five years shall become eligible for furlough on completion of three years of actual imprisonment. As stated *supra*, the petitioner has already undergone more than three years of his sentence. Rule 4 of the Rules of 1959 provides that all Indian prisoners, except the prisoners mentioned in Rule 4, whose annual conduct reports are good shall be eligible for furlough. The petitioner does not fall in the exceptions nor is there any adverse report against the petitioner.

5. Even in the reply-affidavit filed on behalf of respondent no.4, there is absolutely nothing that would adversely affect the request made by the petitioner to grant

furlough leave. If that be so, we do not find any reason why the request made by the petitioner seeking furlough leave should not be granted.

6. The impugned order rejecting the request is thus unsustainable as the same has been rejected on the presumption that the petitioner may commit similar such offence, that too without there being any history showing proclivity of the petitioner to commit any offence, much less similar such offence for which he has been convicted. Moreover, the respondents have not placed on record any criminal antecedent against the petitioner.

7. In the result, we pass the following order :-

(i) The impugned order dated 1st November, 2021 passed by respondent no.2 is quashed and set aside.

(ii) The Respondents are directed to grant furlough leave to the petitioner as per the entitlement, eligibility and upon such conditions as may be permissible to be imposed upon the petitioner in terms of the Rules of 1959, within a period of one week from the date of receipt of this order.

8. Rule is made absolute in aforesaid terms.
9. The professional fees of Ms. D.I.Charlewar, learned Advocate appointed for the petitioner, be quantified and paid, as per the Rules.

[ANIL L. PANSARE,J.]

[ROHIT B. DEO,J.]

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