

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 5722 OF 2021

Nilesh Devilal Chikse ... Petitioner

V/s.

The State of Maharashtra ... Respondent

Mr. Pramod G. Kathane appointed advocate for petitioner.

Ms. S.D. Shinde-APP for the State.

**CORAM : SUNIL B. SHUKRE &
ABHAY S. WAGHWASE, J.J.**

DATED : MARCH 13, 2023.

Oral Judgment : (Per Sunil B. Shukre, J)

. Rule. Rule is made returnable forthwith. Heard finally by consent of the learned counsel for the Petitioner and learned APP for the respondent-State.

2. One of the reasons for which the petitioner has been denied furlough is that as per Rule 4(13) of The Prisons Rules, 1959, the petitioner is not eligible for grant of furlough. It is an admitted position that the petitioner has not been convicted for an offence punishable under Section 364-A of the Indian Penal Code (For short 'IPC'), which is an offence of kidnapping for ransom, but has been convicted only for an offence punishable under Section 364 of the IPC, which is an offence of kidnapping simplicitor. Rule 4(13) makes in

eligible those prisoners who have been convicted for an offence punishable under, *inter alia*, kidnapping for ransom. The ground so taken for denying benefit of furlough to the Petitioner is, thus, erroneous and on this ground, furlough could not have been denied to the petitioner.

3. The other grounds taken for depriving the petitioner of the benefit of furlough are of general nature. The Sub-Divisional Police Officer, Shev Gaon Division, District- Ahmednagar has given an adverse report based upon the ineligibility of the petitioner in terms of Rule 4(4) and Rule 4 (20) of the Prison Rules. These rules pertain to disturbance of public tranquility and possibility of prisoner jumping furlough. The adverse report so given by the SDPO, Shev gaon Division is of general nature and it is seen that it is not based upon any such material as would give rise to reasonable suspicion that if the petitioner is released on furlough, the petitioner may not surrender and may do something as to disturb public tranquility or order.

4. In view of the above, we find that the impugned order cannot be sustained in the eye of the law. Hence, the following order:

ORDER

- i) The petition is allowed.
- ii) The impugned order is hereby quashed and set aside.
- iii) The Competent Authority is directed to grant furlough to the petitioner for such period, as he may be entitled to upon such conditions as may be imposed

reasonably in the discretion of the Competent Authority, within a period of two weeks from the date of order of this Court.

5. Rule is made absolute in the above terms.

(ABHAY S. WAGHWASE, J)

(SUNIL B. SHUKRE , J)