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WP 2015 of 2023.odt

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2015 OF 2023**

Kaushik Baldev Rajgaur

...Petitioner

V/s.

The State of Maharashtra & Ors.

...Respondents

Mr. Aniket Vagal a/w Mr. Kunal Pednekar, & Mr. Divesh Mehani for the
Petitioner.

Mr. Ajay Patil, APP for the Respondent-State.

**CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.**

**RESERVED ON : 3rd OCTOBER, 2023.
PRONOUNCED ON : 16th OCTOBER, 2023.**

ORDER : (PER SHARMILA U. DESHMUKH J.)

1. By this Petition filed under Article 226 and 227 of the Constitution of India, the Petitioner seeks quashing of the Order dated 21st April, 2023 passed by the Respondent No. 4-Additional Director General of Police rejecting the Appeal filed by the Petitioner against the Order of the Superintendent of Jail, thereby upholding the rejection of the Petitioner's Application for furlough leave.

2. Heard Mr. Aniket Vagal, learned Advocate for the Applicant and learned APP for the Respondent-State.

3. Mr. Vagal, learned Advocate for the Petitioner submits that,

the Petitioner's Application for furlough leave is rejected on three grounds viz, that the victim had expressed apprehension of risk to his life, the possibility of breach of law and order situation and the Petitioner being a gang member of a noted criminal. He would further submit that the conviction is of the year 2021 and this is the first Application for furlough leave of the Petitioner. He would further point out that the Petitioner's wife Gauri Kaushik Rajgaur has filed her Affidavit-Cum-Undertaking to stand as surety for him.

4. On behalf of Respondent No. 2, Ms. Aruna A. Mutugrao, Superintendent, Nashik Road Central Prison has filed Affidavit dated 1st September, 2023. It is stated that on 28th July, 2022, the Petitioner had filed an Application for furlough leave with the Superintendent which was forwarded to the Deputy Inspector General of Police (Prisons) for opinion and report. That on 30th December, 2022, the Assistant Commissioner of Police has submitted an adverse police report stating that, the victim has raised apprehension of threat to his life and that the Petitioner is connected with a noted criminal. It is stated that the Petitioner is convicted for offences punishable under Section 307 read with Section 120 B of the IPC and Section 3(1)(ii), 3(2), 3(4) of MCOC Act, 1999. It is stated that, the Application was

rejected on account of the adverse police report under the provisions of Sub Rule (4) of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959. The Appeal preferred against which is also rejected by the impugned Order dated 21st April, 2023.

5. Upon query by this Court, learned APP submits that, the address of the wife of the Petitioner has been verified and the Petitioner was released on bail during the trial and he did not abscond.

6. We have considered the submissions and perused the record.

7. The Petitioner has been convicted by the Sessions Court (Special MCOC Court), Mumbai vide Judgment and Order dated 16th March, 2021 in MCOC Special Case No. 16 of 2013 @ 06 of 2014 @ 19 of 2014 @ 05 of 2018 and convicted for the offences under Section 307 read with Section 120-B of the IPC and sentenced to undergo rigorous imprisonment for 10 years with fine and 10 years for Section 3(1)(ii) of MCOC Act with fine.

8. This Court is informed that as of 31st August, 2023, the Petitioner has undergone imprisonment of 3 year 1 month and 13 days. The stated object of grant of furlough and parole leave is to enable the inmate to continue with his family life and to deal with family matters. The Application of the Petitioner for furlough leave has been rejected by

relying on Sub-Rule (4) of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 which provides that the prisoners whose release is not recommended in Police commissionerate area by the Assistant Commissioner of Police and elsewhere, by the Deputy Superintendent of Police on the grounds of public peace and tranquility shall not be eligible for furlough.

9. The adverse police report has been submitted based on the apprehension of the victim that, if the Petitioner is released, there is threat to the life of the victim and that the Petitioner is an active member of a noted criminal, and, that there is possibility of breach of peace and law and order. In that respect, it needs to be noted that, during the trial, the Petitioner was released on bail and there is no breach of the bail conditions. Further, during this period, there is no complaint from the victim that, there was any threat to his life on account of the Petitioner being released on bail. The Petitioner has already undergone sentence of 3year 1month and 13days and this is the first Application of the Petitioner for furlough leave. In our opinion, the reasons mentioned in the adverse police report are not cogent enough to deny furlough leave as there is no material to support the reasons set out in the adverse police opinion. In our view, the reason of breach of

law and order situation has been stated in mechanical manner without any substantial material to support the same. That apart, there is an Affidavit-cum-Undertaking dated 1st August, 2023 filed by the wife of the Petitioner undertaking to stand as surety for the Petitioner and her address has been verified.

10. In that view of the matter, we are inclined to allow the Petition for grant of furlough leave. Resultantly, the impugned Order dated 21st April, 2023 passed by the Respondent No.4-Additional Director General of Police is hereby quashed and set aside.

11. We direct to the Superintendent of Jail, Nashik Road, Central Prison to release the Petitioner on furlough leave in accordance with the applicable rules and regulations.

12. Petition is allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)