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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3011 OF 2021

Sandeep S/o. Suresh Gaikwad
(Brother of petitioner Sachin S/o. Suresh
Gaikwad, Confined at Central Prison
Kalamba, Kolhapur as Convict No.7112) .. Petitioner

Vs.

1. The State of Maharashtra
Through I.G. Prison, Pune
2. The State of Maharashtra
Through D.I.G., Prisons, Pune
3. The State of Maharashtra,
Through Superintendent Central Prison,
Kalamba, Kolhapur. .. Respondents

.....

Mr. Rupesh Jaiswal for the petitioner
Mr. J.P. Yagnik, APP for the respondent - State

.....

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.**

DATED : 6th JANUARY, 2023.

ORDER : - (Per Prithviraj K. Chavan)

1. Heard learned Counsel for the parties.

2. Rule. Rule is made returnable forthwith. With the consent of the parties, the petition is taken up for final disposal. Learned APP waives service on behalf of the respondents - State .

3. By this petition under Article 226 of the Constitution of India, the petitioner, who is the brother of the convict has challenged orders dated 10.11.2020 and 07.03.2020 passed by the respondent nos. 1 and 2 respectively, thereby rejecting the application seeking furlough by the convict – Sachin S/o. Suresh Gaikwad.

4. A few facts germane for disposal of the petition are summarized as under :-

5. The convict has been arrested on 24.06.2011. The Additional Sessions Judge, Greater Mumbai by a judgment and order dated 02.05.2018 convicted him for the offences punishable under Sections 120B, 302 of the Indian Penal Code and Sections 3(1)(ii), 3(2) and 3(4) of the MCOC Act and sentenced him to undergo imprisonment for life, *inter alia*,

sentenced to pay fine of Rs.27 lacs with a default clause. The petitioner had undergone 10 years and 2 months of imprisonment.

6. The petitioner had applied for grant of furlough to respondent no.3, which came to be forwarded to respondent no.2. However, the respondent no.2 had rejected the said application by an order dated 07.03.2020 on the premise that in case of his release, there is a possibility of threat to the life of witnesses as well as there would be a law and order issue.

7. An appeal preferred by the convict before the respondent no.1 also came to be rejected by an order dated 10.11.2020, maintaining the order passed by the respondent no.2 *inter alia* observing that the convict has nexus with Chhota Rajan gang, who is undergoing the imprisonment under the provisions of MCOC Act. In case of his release, there is every possibility of repeating similar offences as well as there would be a question of law and order in the society.

8. These observations by the respondent no.1 are based on

the report furnished by the Assistant Commissioner of Police, Vashi Division, Navi Mumbai. Thus, the respondent no.1 rejected the appeal thereby declining to extend the benefit of furlough to the convict.

9. We heard Mr. Jaiswal, learned Counsel for the petitioner and Mr. Yagnik, learned APP for the State for a considerable length.

10. With the assistance of the learned Counsel for the petitioner and learned APP, we have meticulously perused the material on record, including the medical reports of the convict as well as an affidavit of one Chandramani A. Indulkar, Superintendent of Kolhapur Central Prison, Kolhapur and an additional affidavit of Mr. Pandurang S. Bhusare, Superintendent of Kolhapur Central Prison, Kalamba, Kolhapur.

11. Learned Counsel for the petitioner has invited our attention towards the medical record of the convict which demonstrates that the convict has been referred for neuro-

physicians opinion and MRI Brain in J.J. Hospital for brain Ischaemia, psoriasis and hypertension. It is brought to our notice that the Medical Officer at J.J. Hospital has stated that the convict was referred from Kolhapur Civil Hospital to J.J. Hospital for his symptoms of difficulty in movement of his four limbs. He has been diagnosed with hypertension, Ischaemia, psoriasis and left sided hemiparesis.

12. Learned Counsel for the petitioner would argue that looking to the precarious medical conditions of the convict, there is hardly any reason to believe that in case of his release on furlough, there would be possibility of threats to the life of the witnesses or law and order situation. The the petitioner, *inter alia*, undertakes to take control and command the activities of the convict in case of grant of furlough.

13. On the other hand, learned APP while opposing the release of the convict on furlough, invited our attention to the affidavits sworn by the Superintendents of Kolhapur Central Prison, Kolhapur. The authorities in the said affidavits have

expressed their apprehension that in case the convict is released on furlough, having regard to his connection with Chotta Rajan gang and also in view of the fact that there are municipal elections, there is every possibility of affecting the law and order situation. The authorities further stated that the behavior of the convict in jail is also not satisfactory, in the sense, he does not do the work assigned to him, which is in contravention of Rule 4(6) of the Maharashtra Prison Manual and also expressed their apprehension that there is likelihood of abscondence and non-return of the convict to the jail, in case of his release.

14. The law on parole and furlough has been reiterated by a catena of decisions. Furlough is granted as a good conduct remission. As a matter of fact, a life convict must undergo the entire term of his sentence. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with the society. The Hon'ble Apex Court in case of **Asfaq Vs. State of**

Rajasthan & Ors.¹ has observed that that convicts too must breathe fresh air for at least some time provided they maintain good conduct, consistently, during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment. A humanistic approach towards those lodged in jails, needs to be taken.

15. Sub-rule (4), (6), (11), (12) and (20) of Rule 4 of the provisions of the Prisons (Bombay Furlough and Parole) Rules, 1959, which have been invoked by the authority to deny furlough to the convict read as under :-

“(4) Prisoners 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.

(6) Prisoners whose work and conduct are, in the opinion of the Superintendent of the Prison, not satisfactory enough;

¹ (2017) 15 SCC 55

(11) Prisoners whose presence is considered dangerous or otherwise prejudicial to public peace and order by the District Magistrate and Superintendent of Police;

(12) Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak, riot, mutiny or escape, or who have been found to be instigating the serious violation of prison discipline, smuggling of narcotic and psychotropic substances including convicted under Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), rape or rape with murder, attempt to rape with murder and foreigner prisoners (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section);

(20) Who in the opinion of police / prison authorities are likely to jump furlough;”

16. On a plain reading of Sub-Rule (4) of Rule 4, furlough can be refused only if release of the convict is not recommended within the Police Commissionerate area by the Assistant Commissioner of Police and elsewhere, by the Deputy Superintendent of Police on the ground of public peace and tranquility.

17. The Assistant Commissioner of Police, Vashi Division, Navi Mumbai, seems to have an apprehension that in case of

release of the convict, there is likelihood of he jumping the furlough *sans* any details or concrete material on record placed before the authority. Decision of the authorities to refuse furlough to the convict appears to be based on some unreasonable and unsubstantiated facts, which is in total ignorance of the very object of release of the prisoners on furlough. It is not an empty formality merely to reproduce the provisions of the Rules by the jurisdictional police while refusing to extend the benefit of furlough. Similarly, there is absolutely nothing on record, save and except the recitals in the affidavits of the Superintendent of Jail to the effect that the work and conduct of the convict was unsatisfactory or, for that matter, his presence would pose some threat to the witnesses as well as would be prejudicial to the public peace and order. This is nothing more than *ipsidixitism* of the Authorities. There is absolutely non-application of mind.

18. Medical reports of the convict referred hereinabove further demonstrate that the convict is required to be given an opportunity to solve his personal problem by maintaining link

with the society as well as family so that he can breathe fresh air for at least some time, in view of his health issues, provided, he maintains a good conduct consistently.

19. In Asfaq (supra), the Hon'ble Apex Court has observed that redemption and rehabilitation of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment. Since furlough is not granted for any particular reason, it can be denied in the interest of the society.

20. The impugned orders appear to have been passed without application of mind by the authorities in a mechanical manner. Such tendency of the authorities have been deprecated by this Court and the Apex Court time and again. The rules as regards eligibility for furlough are to be read in its letter and spirit.

21. Having considered the facts of the case in hand and, keeping in mind the ratio laid down by the Supreme Court as well as the legal position thereof, refusal of furlough to the convict on the grounds stated in the impugned orders are not

legal and unsustainable. The authorities, in our view, have committed a grave error which needs to be rectified.

22. Corollary of the aforesaid discussion is that the grounds on which the Authorities have refused furlough are unsustainable in law.

23. We are of the considered view that the impugned orders warrant interference.

24. Now, to the order :-

ORDER

(i) The impugned orders dated 10.11.2020 and 07.03.2020 passed by the respondent nos. 1 and 2 are quashed and set aside.

(ii) The convict – Sachin S/o Suresh Gaikwad, be released on furlough for a period of 28 days, to be computed from the date of his actual release, on furnishing a bond and a surety in the sum of Rs.50,000/-

to the satisfaction of the respondent no.3 – Superintendent of Kolhapur Central Prison, Kalamba, Kolhapur and on some other terms and conditions as the respondent no.3 deems fit and proper in the circumstances of the case.

(iii) The convict shall attend Vashi Police Station, Navi Mumbai on every Monday and Thursday during the period of furlough.

(iv) The convict shall furnish his cell number to the concerned police station, if any.

(v) After the period of furlough, the convict shall surrender before the respondent no.3 on 28th day from the date of his actual release.

25. Petition is disposed of. Rule is made absolute in the aforesaid terms.

26. All concerned to act on authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.] [REVATI MOHITE DERE, J.]