



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.64 OF 2024

Md. Shafiq Quadri Md. Rafiq Quadr,
Age 47 yrs., Occ. Nil.
[Presently lodged at Central Prison,
Sambhajinagar (Aurangabad)
as convict prisoner No.C/9206]

... Petitioner

... Versus ...

- 1 The Deputy Inspector General of Prisons,
Central Region, Sambhajinagar (Aurangabad)
- 2 The Superintendent,
Central Prison, Sambhajinagar (Aurangabad).

... Respondents

...

Mrs. Sharda P. Chate, Advocate for petitioner
Mr. G.A. Kulkarni, APP for respondent Nos.1 and 2

...

CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 26th SEPTEMBER, 2024

PRONOUNCED ON : 23rd OCTOBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 The petitioner who is inmate invokes the constitutional powers

of this Court to challenge the order dated 16.06.2023 passed by respondent No.1 - Deputy Inspector General of Prisons, Central Region, Sambhajinagar. He also prays for directions to be given to respondent authority to release him on furlough leave.

2 The petitioner had filed application for furlough leave, however, by the impugned order respondent No.1 has rejected the said application. The ground for rejection is the adverse police report and overstay for 224 days and then he was required to arrest back and take to jail.

3 Heard learned Advocate Mrs. Sharda P. Chate for petitioner and learned APP G.A. Kulkarni for respondent Nos.1 and 2. In order to cut short, it can be said that they have argued in support of their respective contentions.

4 Affidavit of Mr. Shivshankar Patil, Superintendent, Central Prison, Chhatrapati Sambhajinagar has been filed, wherein he has tried to demonstrate that the rejection of the order is as per the rules.

5 Learned Advocate for the petitioner, in support of her submissions, has relied on the decision in **Sherkhan Mirbas Khan Pathan vs. The State of Maharashtra** in Criminal Writ Petition No.513 of 2021 decided

on 03.05.2021, **Pratik Ambadas Borase vs. The State of Maharashtra** in Criminal Writ Petition (Stamp) No.3029 of 2020 decided on 17.12.2020, **Narayan Vitthalrao Kewate vs. The D.I.G., Prison (E)(R), Nagpur and another** in Criminal Writ Petition No.76 of 2012 decided on 24.02.2012, **Rajesh Bhikaji Gade vs. The State of Maharashtra and others** in Criminal Writ Petition No.1097 of 2023 decided on 04.11.2023 and **Sanjay Madhukar Waghade vs. State of Maharashtra** [AIROnline 2022 BOM 4891].

6 Important point to be noted from the documents is that overstay is stated to be within Corona period. The said rejection is stated to be in view of Rule 4(10) of the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018. In **Bhausahab Ankush Gade vs. The State of Maharashtra and others** in Criminal Writ Petition No.1272 of 2024 with companion matter decided by this Court on 10.10.2024 we have given elaborate reasons and we have taken note of the decisions in **Bhikabhai Devshi vs. State of Gujarat** [1986 CJ (Guj) 39], **Subhash Pralhad Ghogare vs. The State of Maharashtra and others** in Criminal Writ Petition No.1926 of 2024 decided on 20.06.2024 and **Pratap Tukaram Godse vs. The State of Maharashtra and others** in Criminal Writ Petition No.2595 of 2024 decided on 01.07.2024. Therefore, we do not consider the reasons of overstay can be a ground for rejection of furlough leave. The adverse report from the office

of Assistant Commissioner of Police, Chhatrapati Sambhajanagar appears to be on the ground that there would be breach of peace and tranquility in the village and there will be threat to the life of complainant and witness of the case if the petitioner would be released but it appears to be without any foundation. Adverse report cannot be based on the assumption and without any basis. Respondent authority has not considered the other points which ought to have been considered i.e. the behaviour of the petitioner inside the jail. The surety is ready to take the responsibility of the petitioner. If rejections of furlough or parole leave are allowed to be on these grounds, then the very purpose for grant of such leaves or facility of leave would get frustrated. Hence, we pass following order.

ORDER

- i) Criminal Writ Petition stands allowed.
- ii) Impugned order dated 16.06.2023 passed by respondent No.1 in respect of petitioner stands quashed and set aside.
- iii) Petitioner be released on furlough leave for admissible days, which respondent No.1 to clarify upon executing two sureties in addition to their own bond to the extent of Rs.50,000/- (Rupees Fifty Thousand only).

iv) Needless to clarify that petitioner once released on furlough, shall report to the Police Station, within whose jurisdiction he intends to stay, on every Monday and Thursday, between 10.00 a.m. to 11.00 a.m., during the period the leave has been granted.

v) Petitioner should furnish entire details of his stay during the said period to the prison authorities as well as to the Police Station.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)

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