



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 71 OF 2024

Sudam @ Rahul Kaniram Jadhav
(C-8959), Age 52 years, Occ. Prisoner,
R/o. C-8959, Harsool Jail,
Aurangabad.

... Petitioner

VERSUS

- 1) The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya
Mumbai-32.
- 2) The Dy. Inspector General of Prison,
Central Prison, Aurangabad,
Tq. & Dist. Aurangabad.
- 3) The Additional Director General of Police,
Pune, Old Central Building 2 Floor,
Pune.

... Respondents

...

Advocate for Petitioner : Mr. M.M. Parghane
A.P.P. for Respondent/State : Mr. V.K. Kotecha

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

DATE : 29.01.2024

PER COURT : (PER : MANGESH S. PATIL, J.)

Heard. Rule. Rule is made returnable forthwith. Learned A.P.P. waives service for the respondent.

2. The petitioner who is a life convict for an offence punishable under Section 302 of the Indian Penal Code, is seeking furlough leave and is aggrieved by the basic order dated 16.03.2023 passed by the respondent no. 2-Deputy Inspector General of Prison [DIG (Prison)] rejecting his application

on the ground of Rule 4(4), 4(5) and 4(6) of the Prisons (Bombay Furlough and Parole) Rules, 1979 (hereinafter 'the Rules'), and whose statutory appeal has been dismissed by the respondent no. 3-Additional Director General of Police, Pune, by the impugned order dated 02.08.2023.

3. The learned advocate for the petitioner would submit that there was no sufficient and cogent reasons or grounds for refusing his furlough leave application. He is suffering incarceration since long. He is ready to furnish appropriate surety and even would abide by the conditions like attending the nearest police station on daily basis. The purpose of grant of furlough or parole leave is to enable the prisoners who are suffering incarceration to maintain societal ties. There are no sufficient and concrete reasons to entertain any apprehension about his possible conduct once released on leave and the petition be allowed.

4. Per contra, the learned A.P.P. would support both the orders. He would submit that the petitioner's release has not been recommended by the concerned authority. He is involved in gruesome murder of a woman and her three children. There is every possibility of his disturbing a peace and tranquility if released on leave. Recently when he was taken to the Government Hospital at Aurangabad on 16.02.2023, the applicant turned violent. He started arguing with the Medical Officer and even threatened him. Such conduct demonstrates his violent mental condition and the authorities have rightly refused the leave.

5. We have considered the rival submissions and perused the papers. The respondent no. 2 by the impugned order has refused to consider the request of the petitioner for grant of furlough leave precisely on the grounds contemplated in Rule 4(4), 4(5) and 4(6). Whereas, the respondent no. 3 has decided the statutory appeal and has dismissed it without specifically referring to these Rules. For the sake of convenience these Rules are as

under :

“4(4) 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.

4(5) Prisoners who, in the opinion of Superintendent of Prison show tendency towards crime;

4(6) Prisoners whose work and conduct are, in the opinion of the Superintendent of the Prison, not satisfactory enough;”

6. At the outset, we are pointing the aforementioned circumstances to demonstrate as to how the respondent nos. 2 and 3 are assigning different grounds for refusing the parole leave except the common ground contained in Rule 4(5) and 4(6). The respondent no. 2 had rejected the petitioner's application even for the ground contained in Rule 4(4). The respondent no. 3 while deciding the statutory appeal has expressly observed that there were no statement of anybody entertaining some apprehension, in tune with Rule 4(4).

7. As far as the order passed by the respondent no. 2 is concerned, in paragraph no. 5 of the order he has mentioned that the report received from the Superintendent of Police, Chandrapur was adverse to the petitioner. The surety being furnished by him was aged and was found to be incapable of securing his presence and objecting to release of the petitioner on leave.

8. Whereas, the impugned order passed by the respondent no. 3 in appeal merely mentions that the Sub Divisional Police Officer Gadchandur District Chandrapur having submitted a report not recommending grant of leave.

9. Bearing in mind the specific wording of Rule 4(4) (supra), it should be a case where the Assistant Commissioner of Police or Deputy Superintendent of Police are refusing to recommend release on the ground of public peace and tranquility. Apart from the fact as to the sanctity and binding nature of such report, it is also imperative that such a negative recommendation should be substantiated by pointing out precisely the circumstances which would weigh with the police

officers to entertain apprehension that granting leave to the prisoner would be prejudicial to the public peace and tranquility.

10. Obviously, the respondent nos.2 and 3 who are the prison authorities may not be in a position to undertake any objective scrutiny of the grounds being furnished by the police officer while forwarding the recommendation under Rule 4(4). However, in our considered view, it is imperative for the jail authorities to at least examine whether the negative recommendation coming from the police officer is substantiated or supported by some objective material demonstrating as to how the prisoner being at large on leave would be prejudicial to public peace and tranquility. This precisely has not happened in the matter in hand. The respondent nos. 2 and 3 have merely referred to the fact that there is some negative report from the concerned police officer, while resorting to ground of Rule 4(4).

11. There is absolutely no whisper in both the orders to demonstrate objective material, if any, referred to by the police officer while forwarding the negative recommendation under Rule 4(4). Even there is conspicuous absence about the negative recommendations containing any statement touching the aspect of public peace and tranquility. In the absence of which, in our considered view, the respondent nos. 2 and 3, have clearly overlooked the aforementioned aspects and have readily accepted the negative recommendation while resorting to Rule 4(4) in turning down the request of the petitioner for furlough leave. Therefore the impugned orders refusing the furlough leave on the ground contained in Rule 4(4) are not legally sustainable.

12. Coming to the ground contained in Rules 4(5) and 4(6), the respondent nos. 2 and 3 in their respective orders have referred to a specific instance wherein, when the petitioner was taken to the Government Hospital he allegedly misbehaved and threatened the medical officer, which is a misconduct as described in Chapter XXVI of the Maharashtra Prisons (Discipline) Amendment Rules, 2015 contained in Maharashtra Prisons Rule, 1979. However, both the orders are conspicuously silent in respect of the material

to substantiate this stand. There is no reference to any grievance having been made by the concerned medical officer or any statement having been recorded or even any enquiry having been undertaken pursuant to the alleged misconduct. Mere vague and omnibus statements in the impugned order referring to the incident without even extending an opportunity to the petitioner to meet these allegations would be contrary to the principles of natural justice.

13. The respondent nos. 2 and 3 have been vested with certain powers to consider the requests for grant of furlough and parole leave. It is expected of them to have followed the principles of natural justice and to have assigned cogent and convincing reasons, duly substantiated by the material/evidence, before drawing any inference much less touching the alleged misconduct. That would include even some enquiry into those allegations and collection of material therefor. The statement in the impugned orders that the petitioner has indulged in some misconduct cannot be taken as a gospel truth. Precisely in this respect both the orders are sans any objective material to enable this Court to examine the inference drawn by these authorities and to ascertain whether those inferences are justifiable.

14. In the circumstances, in our considered view, it is a matter which if fit to be remanded to the respondent no. 2 for passing a fresh order on the petitioner's application for furlough leave, in the light of the above observations.

15. The Criminal Writ Petition is partly allowed. Both the impugned orders, passed by the respondent nos. 2 and 3 dated 16.03.2023 and 02.08.2023 respectively, are quashed and set aside. The matter is remitted back to the respondent no. 2, who shall consider the petitioner's application for furlough leave on its own merits in the light of the above observations

and only on the touchstone of Rules 4(5) and 4(6), by extending an opportunity to the petitioner to explain the circumstances in respect of the alleged misconduct mentioned in the report dated 16.02.2023 submitted by the Superintendent of Police Aurangabad Central Prison vide letter no. 1089/2023.

16. The respondent no.2 shall pass a fresh order in the light of the above, as expeditiously as possible, and in any case within four weeks.

(SHAILESH P. BRAHME, J.)

(MANGESH S. PATIL, J.)

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