



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.297 OF 2024

Shaikh Ejaj Gulab @ Munna Jahagirdar

... PETITIONER

VERSUS

1. The State of Maharashtra
2. The Dy. Inspector General of
Central Prison, Chh. Sambhajinagar
3. The Additional D.G.P./Inspector
General of Prison and Correctional
Services Maharashtra State, Pune
4. The Superintendent of
Central Prison, Chh. Sambhajinagar

... RESPONDENTS

...
Advocate for Petitioner : Ms. Bharati B. Gunjal
APP for respondents/State : Mr. G.A. Kulkarni
...

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

DATE : 21.02.2024

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

By this petition under Articles 226 and 227 of the Constitution of India the petitioner who is suffering a sentence of life imprisonment is aggrieved by the order passed by the respondent No.2 – Deputy Inspector General of Central Prison, Chh. Sambhajinagar refusing to grant furlough on the ground mentioned in Rule 4(4), 4(10) and Rule 6 of the Prisons (Bombay Furlough and Parole) Rules, 1959. He is also

aggrieved by and challenging the decision of the respondent No.3 – The Additional Inspector General of Prison and Correctional Services, who has dismissed his appeal preferred in terms of Rule 2 of the State Government Notification dated 16.04.2018, confirming the order of refusal of furlough.

2. We have heard both the sides finally at the stage of admission.

3. The learned advocate Ms. Gunjal for the petitioner submits that none of the grounds resorted to by the respondent Nos.2 and 3 is sustainable. Without there being any cogent and relevant material, the surety being furnished by the petitioner has been held to be incompetent for the reason that he himself is involved in several crimes. She would then submit that Rule 4(4) contemplates that the recommendation of police should be with reference to public peace and tranquility. Since the petitioner does not have the police report it could not be annexed. There is no reference in the impugned orders about such negative recommendation of police on the basis of public peace and tranquility.

4. Ms. Gunjal would then submit that under Rule 4(10), a contingency of tendency to escape of the prisoner and overstay is contemplated. The petitioner had overstayed when he was released on furlough, for a period of 1264 days, however, he has not been charged for the offence punishable under Section 224 of the Indian Penal Code and

even there has been no decision to remove his name permanently from the remission register. However, the authorities have not considered these aspects.

5. Lastly, the learned advocate would submit that some of the convicts who have overstayed have been subsequently granted furlough and the petitioner has been discriminated against. The impugned orders would adversely affect the purpose for which furlough has to be granted. The aspect of societal and family life is not permanently detached, ill-effect of the continuous incarceration and maintenance and development of self-confidence have been completely overlooked by the authorities. The orders be quashed and set aside and the respondents be directed to grant furlough to the petitioner.

6. Per contra, the learned APP strongly opposes the petition. He submits that both the orders have been passed after application of mind to the peculiar facts and circumstances, the surety offered by the petitioner though related to him has himself engaged in several crimes. There is adverse police report and admittedly the petitioner has overstayed for as many as 1264 days that is more than three years when he was released on furlough in the year 2018. He did not offer any explanation for such a prolonged overstay. Even he had not surrendered on his own but had to be arrested and brought back to prison and no fault can be found in the orders under challenge.

7. We have considered the rival submissions and perused the papers. As has been mentioned herein above, the petitioner has been refused furlough on three counts by precisely referring to Rule 4(4), 4(10) and 6 by the respondent No.2. It is therefore necessary to examine sustainability of the impugned orders with specific reference to these provisions/grounds.

8. Considering the wording of Rule 4(4), the furlough cannot be granted if the police report gives a negative recommendation on the ground of public peace and tranquility. Plain reading of the wording makes it abundantly clear that the view of the police cannot be arbitrary or lopsided. It has to be with reference to the potential of the prisoner if released on furlough of adversely affecting public peace and tranquility. It is imperative for the police if they are giving a negative recommendation to objectively opine as to the reasons or the circumstances which enable the police to perceive that the prisoner being at large on a furlough would have bearing on the public peace and tranquility.

9. The impugned orders do not expressly discuss, rather conspicuously omit to state that the negative police recommendation is on the ground of public peace and tranquility. The orders simply and vaguely mention that there is a negative police report. A copy of police report which is made available to us merely refers to the competence of the surety being offered by the petitioner. It does not expressly mention

about any possibility of the public peace and tranquility being adversely affected if the petitioner comes out of the prison on furlough. If the police report itself does not refer to this aspect, the respondent authorities are not legally justified in blindly following the police report unmindful of Rule 4(4). Therefore, this ground resorted to by the respondents in passing the impugned orders would not be legally sustainable.

10. As regards Rule 4(10), admittedly, the petitioner was released on furlough in the year 2018 and had overstayed for a period of 1264 days whereafter he had to be arrested and brought back to the prison. It is being pointed out that even in that respect Crime No.35/2022 for the offence punishable under Sections 193 and 205 of the Indian Penal Code was registered.

11. Even if some benevolent view is to be adopted, the application submitted by the petitioner and even the petition itself does not contain or make any attempt to explain the circumstances as to why he could not return back to the prison after the furlough was availed of. In the absence of even an attempt to explain the reasons for not returning to the prison for more than three years, we find no illegality in the impugned orders refusing to grant furlough with reference to Rule 4(10).

12. This leaves us with the last ground, in respect of eligibility of the surety as is contemplated under Rule 6. Rule 6 reads thus :

"6. Furlough not to be granted without surety - A prisoner shall not be granted furlough unless he can provide a suitable surety willing to receive him. Family members, relatives or friends of the prisoner, if of good antecedent, may stand for him or the member of local bodies, Police Patil or Registered Medical Practitioner of the home town may if willing and acceptable also be allowed to stand surety. The surety chosen must be willing to enter into a surety bond as in 'Form A' appended to these rules for such amount as may be fixed by the Sanctioning Authority :

Provided that the sanctioning Authority may dispense with the requirement for a surety where the prisoners confined in Open Prisons as defined in clause (b) of Rule 2 of the Maharashtra Open Prisons Rules, 1971."

13. The petitioner had offered his nephew as a surety and the authorities, having based on the police report, found him to be ineligible because of the fact that he himself has been involved in crimes as is reported in the police report. The police report gives details regarding the number of crimes in which the proposed surety has been implicated. There are three to four crimes registered against him for the offences against human body. Rule 6 mandates that furlough cannot be granted without surety and if the police and the respondent authorities have considered the consistent criminal record of the proposed surety, in our considered view, this Court in exercise of the powers under Articles 226 and 227 of the Constitution cannot substitute its views about competence and eligibility of the surety. The decision is based on objective material and clearly substantiates the apprehension about his incompetence in securing petitioner's presence if the latter is released on furlough.

14. In the result, even though the impugned orders are not sustainable to the extent they seek to refer to Rule 4(4), those would still be sustainable in the light of the peculiar facts and circumstances with reference to Rule 4(10) and Rule 6.

15. The writ petition is dismissed.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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