



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 986 OF 2024

Noor Mohammed Alihasan Malik

... Petitioner

Versus

The Deputy Inspector General of Prisons & Ors. ... Respondents

...

Ms. Sharda P. Chate, Advocate for the Petitioner

Mrs. Vaishali N. Patil – Jadhav, APP for Respondents - State

...

CORAM : R. G. AVACHAT &
NEERAJ P. DHOTE, JJ.

DATE : 10.07.2024

PER COURT :

1. It is submitted by the learned Advocate for the Petitioner that the Petitioner has been granted Furlough leave by the Competent Authority by the order dated 09/05/2024 on execution of P. R. Bond of Rs. 5,000/- and one Surety amongst relative in the like amount. It is submitted by the learned Advocate for the Petitioner that the Petitioner being poor is unable to furnish the Surety. It is further submitted by the learned Advocate for the Petitioner that in the Appeal, the Appellate Authority had reduced the amount of Surety Rs.3000/-. It is submitted by the learned Advocate for the Petitioner that even then, the Petitioner is unable to furnish the Surety of Rs.3000/-.

2. She submits that though the order is passed in his favour, he is unable to seek benefit of Furlough leave due to the said condition

of Surety Bond. She prays for the following relief made in the Petition.

“b) This Hon’ble High court may be pleased to issue appropriate writ, order, or, directions to Respondent No.1 to quash and set aside the direction / order dated 02.05.2024 [EXH – C] passed by the Respondent No.1 i.e. Deputy Inspector General (Prisons), Nashik Region, Nashik.

c) This Hon’ble High court may be pleased to issue appropriate writ, order, or, directions to Respondent No.1 to 2 to release Petitioner on Furlough leave for the period of 28 days on his Personal Recognition Bond on suitable terms and conditions as per Rule 6, Para 2 of the notification dated 16.04.2018, called as Maharashtra Prisons (Bombay Furlough and Parole) Amendment Rules, 2018 in a time bound manner in the interest of justice. ”

3. Learned Advocate for the Petitioner relied on the decision of this Court in Criminal Writ Petition No.848/2010 [Dipak Sudhakar Wakalekar Vs. The State of Maharashtra and Ors.] delivered by the Full Bench, wherein, the point of reference was as follows:

“Whether as per proviso to Rule 6 of The Prison (Bombay Furlough and Parole) Rules, 1959, a convict confined in open prison, can be released on parole/furlough by the Authorities by dispensing with the requirement of execution of bond by the relatives ?”

The Full Bench held as under:

“In the light of the discussion made above, we hold that as per the proviso to rule 6 of the Rules 1959 a convict confined in open prison can be released on furlough by the sanctioning authority by dispensing with the requirement of execution of bond by the relatives.

We hold that a convict confined in open prison can be released on parole by the authorities by dispensing with requirement of execution of bond by the relatives.

24) The reference is answered accordingly. The Registry is directed to place these petitions before appropriate Court for deciding the same in accordance with law.”

4. It is submitted by the learned APP that appropriate order may be passed.

5. It is seen that the Petitioner is lodged in the open prison at Visapur. The Petitioner is behind the bars since last more than fourteen (14) years. Though the Petitioner is granted Furlough leave by the Competent Authority, he is unable to go on the said leave because of the said condition. In view of the above authoritative pronouncement, the Petitioner is entitled for Furlough leave without the execution of bond by his relative. Hence, the following order:

ORDER

(I) The Writ Petition is partly allowed.

(II) The condition imposed by the Competent / Appellate Authority for furnishing the Surety as the condition precedent for Furlough leave is set aside.

(III) Rest of the order stands unaltered.

6. Writ Petition is disposed of accordingly.

[NEERAJ P. DHOTE, J.]

[R.G. AVACHAT, J.]

Sameer