

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

924 CRIMINAL WRIT PETITION NO. 1561 OF 2024

SANKET PRALHAD JAYABHAYE

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

...

Advocate for the Petitioner : Mr. Chate Sharada Pundlik
APP for Respondent Nos. 1 to 4/State : Ms. Priya B.
Bharaswadkar

...

CORAM : SMT. VIBHA KANKANWADI &
R. W. JOSHI, JJ.

DATE : 14.11.2024.

PER COURT :

1. The present petition has been filed invoking the Constitutional powers of this Court under Article 226 of the Constitution of India to challenge the impugned orders dated 13.12.2023 and 07.2.2024 passed by respondent Nos. 2 and 3, thereby rejecting the furlough leave to the petitioner.

2. Heard the learned Advocate for the respective parties.

3. The learned Advocate for the petitioner has relied upon the decision of this court, **Bench Nagpur in Sanjay Kisan**

Kadse Vs. State of Maharashtra -2004 (1) Bom. C.R. (Cri.) 758 - DB and in Shaikh Ashpak s/o Shaikh Hassan Vs. The State of Maharashtra & Ors.- 2004 (1) Mah. L.J. 789. The challenge is only on the basis of adverse police report the said leave has been rejected.

4. The learned APP points out that in the report it is stated that the petitioner had given threats to the witnesses and therefore, they have an apprehension of danger to their life.

5. We have perused the said report which was submitted by the jail authorities on 05.12.2023 but we can see that there is no date or approximate period has been given when that threat was given and it appears that said threat was prior to the conviction. It appears from the record that since 2018-2019 till 2023 when the petitioner was convicted he was under trial. Therefore, it was necessary for the police authorities who was giving report to consider as to when that alleged threat was given by the petitioner. Respondent Nos. 2 & 3 also ought have been consider the duration that has passed from the alleged threat till the present date on which they were called upon to take the decision on furlough leave.

6. The two decisions those have been relied upon by the learned Advocate for the petitioner on the same point i.e. on the basis of adverse report from the police stating that there will be breach of peace or threats to the witnesses cannot be considered as routine ground for rejecting the furlough leave. We are of the opinion that there has to be connection between the two facts i.e. one giving threats to the witnesses and the date on which the respondent Nos. 2 & 3 are required to take the decision and therefore, the decision that has been taken in the present matter on 13.12.2023 and 7.2.2024 by respondent Nos. 2 & 3 cannot be allowed to be sustained.

7. We set aside those orders. Respondent No. 3 should grant furlough leave to the petitioner for the requisite period as per law and by imposing appropriate conditions such order be passed by respondent No. 3 within a period of two weeks from today.

(R.W. JOSHI)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE