



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

CRIMINAL WRIT PETITION NO.1798 OF 2024

Javed Bablu Pathan C/282,
Age-33 years, Occu:Nil,
R/o-Serving sentence at Harsool
Open Prison, Dist-Ch. Sambhajinagar

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary, Home Department,
Mantralaya, Mumbai-400032,
- 2) The Special Inspector General of Prisons,
Central Region, Aurangabad,
- 3) The Superintendent,
Harsool Open Prison,
District-Chhatrapati Sambhajinagar

...RESPONDENTS

...
Ms. Sharda P. Chate Advocate for Petitioner.
Mr. N.R. Dayama, A.P.P. for Respondents.
...

**CORAM: SMT. VIBHA KANKANWADI AND
R.W. JOSHI, JJ.**

DATE : 13th NOVEMBER, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present writ petition has been filed by the jail inmate undergoing sentence, to challenge the order dated 13th September 2024 passed by respondent No.2 while allowing the

application for release of the petitioner on furlough leave for 28 days. The challenge is to the extent of the two sureties directed to be given as well as the cash security.

2. Heard learned Advocate Ms. Chate appearing for the petitioner and learned APP Mr. Dayama appearing for the respondents and perused the affidavit on behalf of respondent No.3 by Mr. Dattatray Ganpat Gawade, Superintendent of Chhatrapati Sambhajanagar Central Prison, giving details as to how the matter has been decided and on what basis.

3. From the record it appears that the present petitioner came to be convicted on 7th July 2022 in Sessions Case No.144 of 2017 by the learned Additional Sessions Judge-5, Baramati, District-Pune for the offence punishable under Section 302 of the Indian Penal Code. He has been sentenced to suffer imprisonment for life and pay fine. It appears that from 24th June 2017 till 6th July 2022 he was under-trial prisoner i.e. for the period of five years and thirteen days. Thereafter he is serving the sentence. The petitioner is from Aligarh, Uttar Pradesh. It is stated that he has applied for furlough leave for the first time as he wants to meet his family which is at Uttar Pradesh. His

application has been allowed, however, as aforesaid, condition has been imposed. The relevant part of the order reads thus:-

"That the said prisoner shall execute surety bond for amount of Rs.25,000/- only and second surety bond for the same amount, Cash Security Amount of Rs.25,000/- and his Personal Bond amount Rs.25,000/- only."

4. The petitioner says that in view of the fact that he is under trial since 2017, he is unable to get surety and he is a poor person and therefore, unable to pay cash security.

5. Certainly which condition should be imposed or annexed to an order granting furlough or parole, would be within the domain of the concerned authority with whom the powers are given to decide those applications. However, the authority should be vigilant about the purpose for which there is a provision for furlough and parole. The conditions those would be imposed should not be harsh and to the extent that it will render the order negating the effect and purpose under the Act or Rules. The authority in the present case ought to have been vigilant of the fact that since 2017 the petitioner was an under trial, would not have been in contact with any person making it very hard for him to fetch a surety. Further, it appears that when the report was called from Aligarh Police Station, it is said that the mother

of the petitioner accepted that she would stand as surety. The documents are also attached, signed by Sarpanch, Gram Panchayat Mandak, District-Aligarh regarding the permanent residence of the petitioner in the said village. Therefore, when present petitioner had made an application for modification of the said condition, it ought to have been considered sympathetically by the concerned authority. We therefore, take this as a fit case where we should interfere under our constitutional jurisdiction. Taking into consideration the fact that the authority should get assured that the petitioner should return back to the jail. Certainly, he cannot be released only on P.R. Bond.

6. Therefore, we partly allow the writ petition and set aside the condition to the order of release on furlough issued by respondent No.2 on 13th September 2024 to the extent that the petitioner should execute surety bond for Rs.25,000/- and second surety bond for the same amount. We clarify that the order regarding cash security of Rs.25,000/- and P.R. Bond of Rs.25,000/- is confirmed.

[R.W. JOSHI]
JUDGE

asb/NOV24

[SMT. VIBHA KANKANWADI]
JUDGE