



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1872 OF 2023

Sahebrao Munjaji Ingole,
Age 55 yrs., Occ. Prisoner,
R/o C-8800, Harsool Jail,
Aurangabad.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai – 32.
- 2 The Deputy Inspector General of Prison,
Central Prison, Aurangabad,
Tq. & Dist. Aurangabad – 431 008.
- 3 The Additional Director General of Police,
Pune, Old Central Building - 2nd Floor,
Pune, 411 001.

... Respondents

...

Mr. M.M. Parghane, Advocate for petitioner

Mr. A.V. Lavte, APP for respondent Nos.1 to 3

...

CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.

RESERVED ON : 27th SEPTEMBER, 2024

PRONOUNCED ON : 10th OCTOBER, 2024

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 The petitioner who is inmate invokes the constitutional powers of this Court to challenge the order dated 01.11.2023 passed by respondent No.3. He also prays for directions to be given to respondent authority to release him on furlough leave.

2 The petitioner had filed application for furlough leave, however, by the impugned order respondent No.2 has rejected the said application and the appeal has also been dismissed by respondent No.3. The ground for rejection is the adverse police report and overstay for 240 days and then he was required to arrest back and take to jail and offence under Section 224 of the Indian Penal Code has been filed.

3 Heard learned Advocate Mr. M.M. Parghane for petitioner and learned APP Mr. A.V. Lavte for respondent Nos.1 to 3. In order to cut short, it can be said that they have argued in support of their respective contentions.

4 Important point to be noted from the documents is that overstay is stated to be within Corona period and it appears that show cause notice was issued to the petitioner as to why his name should not be taken off from the remission register. The petitioner has given the explanation in writing.

He has stated that he suffered with an accident and there was fracture to his seven ribs. The said rejection is stated to be in view of Rule 4(10) of the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018. In **Bhausahab Ankush Gade vs. The State of Maharashtra and others** in Criminal Writ Petition No.1272 of 2024 with companion matter decided by this Court on 10.10.2024 we have given elaborate reasons and we have taken note of the decisions in **Bhikabhai Devshi vs. State of Gujarat** [1986 CJ (Guj) 39], **Subhash Pralhad Ghogare vs. The State of Maharashtra and others** in Criminal Writ Petition No.1926 of 2024 decided on 20.06.2024 and **Pratap Tukaram Godse vs. The State of Maharashtra and others** in Criminal Writ Petition No.2595 of 2024 decided on 01.07.2024. Therefore, we do not consider the reasons of overstay can be a ground for rejection of furlough leave. The adverse report appears to be on the basis of statement of Police Patil and President of Tantamukti Samiti, but that statement appears to be without any foundation. Adverse report cannot be based on the statement of a third person and without any basis. No offence is stated to have been committed by the petitioner when he was released earlier. The said offence of Section 224 of the Indian Penal Code, as aforesaid, was the outcome of the overstay in Corona period. Both the authorities i.e. respondent Nos.2 and 3 have not considered the other points which ought to have been considered i.e. the behaviour of the petitioner inside the jail. The surety is ready to take

the responsibility of the petitioner. If rejections of furlough or parole leave are allowed to be on these grounds, then the very purpose for grant of such leaves or facility of leave would get frustrated. Hence, we pass following order.

ORDER

- i) Criminal Writ Petition stands allowed.
- ii) Impugned order dated 01.11.2023 passed by respondent No.3 in respect of petitioner stands quashed and set aside.
- iii) Petitioner be released on furlough leave for admissible days, which respondent No.2 to clarify upon executing two sureties in addition to their own bond to the extent of Rs.50,000/- (Rupees Fifty Thousand only).
- iv) Needless to clarify that petitioner once released on furlough, shall report to the Police Station, within whose jurisdiction he intends to stay, on every Monday and Thursday, between 10.00 a.m. to 11.00 a.m., during the period the leave has been granted.
- v) Petitioner should furnish entire details of his stay during the said period to the prison authorities as well as to the Police Station.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)