

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 828 OF 2024

Tabrez @ Tabbu Darvesh Khan .. Petitioner

Versus

The State Of Maharashtra And Ors. .. Respondents

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Mr. Nitin Sejpai a/w Ms. Akshata B. Desai, for the Petitioner.

Mr. S. V. Gavand, A.P.P. for the State/Respondent.

Ms. Suvarna Chorge, Jailor (Gr-II), Nashik Road Central Prison, is present.

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**CORAM : BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.**

DATED : 10th JULY, 2024

P.C:-

1. In denying the benefit of parole leave, the Additional Director General of Police and Inspector General of Prisons and Correctional Services, State of Maharashtra, Pune, in his affidavit dated 10.06.2024 has stated as under :

“4. I say and submit that the Deputy Inspector General of Prisons, Central Region, Chh. Sambhaji Nagar, being the Sanctioning Authority to decide the Furlough application of the petitioner, has rejected the application of the Petitioner seeking Furlough leave upon considering the adverse police report dated

*4th November, 2023 (**annexed hereto marked as Exh-B**) wherein the Police Authorities have registered their objection to release the Petitioner on Furlough leave on the grounds that there is possibility of threat to the life of witnesses, and that there is also possibility that a serious crime may occur by the hands of the Petitioner. The sanctioning authority, that is to say, the Deputy Inspector General of Prisons, Central Region, Chh. Sambhaji Nagar, also considered the facts of pendency of other cases against the Petitioner.*

5. I say and submit that while deciding the appeal filed by the Petitioner, the appellate authority has taken into consideration all the facts and circumstances brought forth by the police authorities and the observations of the Sanctioning Authority. In the first instance, the forwarding authority, that is to say, the Superintendent of Nashik Road Central Prison, who is the custodian of Petitioner, has not recommended to allow Furlough to the Petitioner, Secondly, the Police Authorities have also recommended not to release the Petitioner on Furlough leave mentioning that the Petitioner is associated with the Amin Pathan Gang. The Appellate Authority vide its letter dated 22.05.2024 asked the Senior Police Inspector, Pawai Police Station, Mumbai to submit the documents substantiating the Petitioner's association with the said Amin Pathan Gang. Accordingly, the Senior Police Inspector, Pawai Police Station, Mumbai vide their letter dated 22.05.2024 submitted a report to this office wherein it has been pointed out how the Petitioner is associated with the said

gang. The material shows that the present petitioner have committed other offences along with the close relatives/associates of Amit Pathan. (A copy of the report is annexed hereto and marked as Exh-C). Finally the Sanctioning Authority, namely, the Deputy Inspector General of Prisons, Central Region, Chh. Sambhaji Nagar has also denied furlough to the Petitioner. All these authorities after considering all these facts, the Appellate Authority, namely, the present Respondent, has rejected the appeal against the rejection order in keeping with the rules regulating Furlough leave.”

2. On the last date of hearing i.e. 02.05.2024, the attention of the respondent-authorities was invited to a circular issued by Additional Director General of Police and Inspector General of Prisons dated 17.08.2022 and it informed that it was still in force. According to the learned counsel for the Petitioner, the said circular has issued instructions to the prisons authorities not to reject the applications for parole and furlough only on the ground of adverse police report, if the prisoner/convict is otherwise entitled to avail the benefit.

We hope and trust that the Additional Director General of Police and Inspector General of Prisons and Correctional Services who has affirmed an affidavit on 10.06.2024 is conscious of these directives/guidelines issued by his own department.

3. The grounds stated for rejection of parole is perfunctory, as it can be seen that the convict who is also an accused in three other cases is directed to be released on bail and he is definitely bound by the terms and conditions imposed upon him by the respective competent courts, which have enlarged him on bail. If he is undergoing sentence of imprisonment on being convicted for committing an offence under Section 302 read with Section 120-B, Section 392 read with Section 34 of the IPC and other sections by the competent court, he is entitled for the benefit of the furlough and parole, which provisions exist in the prison system for enabling the convict to continue maintaining his family ties and discharge of his family responsibilities.

Time and again we have noticed that the prison authorities who are empowered to secure the release of a convict who is in their custody on account of he being sentenced to imprisonment, have acted in a perfunctory manner merely by expressing disinclination that his discharge or release from prison is likely to result in some untoward situation including he being indulging himself in an offence. We do not think that the laws are insufficient to take care of such a situation.

However, merely because the police report from the local police station advises the authorities not to exercise the power to release him on parole/furlough, which is merely founded on an apprehension and without any basis, as what is stated in the affidavit is that the Petitioner is associated with

Amin Pathak gang, without furnishing any iota of material, as to on what basis such a connect is alleged.

4. We hope and trust that the authorities would refrain from making such remarks which are totally unfounded and scribed just with an intention to deny the benefit available to a convict, who despite being incarcerated is not denuded of his right under Article 21 of the Constitution of India.

In the wake of the aforesaid reasoning, since the order impugned cannot be not sustained, the Petitioner is entitled for his release on furlough leave and the respondent-authorities, shall so release him, by imposing requisite conditions for his release.

Writ Petition is made absolute in above terms.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)

Digitally
signed by
CHAITANYA
ASHOK
JADHAV
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