



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

923 CRIMINAL WRIT PETITION NO. 1367 OF 2025

Shaikh Mohd Rafik A. Samad,
Age : 44 years, Occ; Nil, Convict No. 8338
R/o; At Present in Central Prison,
Chhatrapati Sambhajanagar.

...PETITIONER

VERSUS

1. The State Of Maharashtra
Through Home Department,
Mantralaya, Mumbai.
2. The Special Dy. Inspector General,
Central Prison, Chhatrapati Sambhajanagar.
3. The Additional D.G.P./Inspector
General of Prison and Correctional
Services Maharashtra State, Pune.
4. The Superintendent of Central Prison,
Chhatrapati Sambhajanagar.

...RESPONDENTS.

...
Advocate for the Petitioner : Ms. Bharati B. Gunjal
APP for Respondents/State : Mr. V.K.Kotecha
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CORAM : NITIN B. SURYAWANSHI AND
SMT. VAISHALI PATIL-JADHAV, JJ.
DATE : 15.10.2025

ORAL JUDGMENT : (Per : NITIN B. SURYAWANSHI, J.)

1. Rule. Rule made returnable forthwith. Heard finally by the
consent of the parties, at the stage of admission.

2. By this petition, filed under Articles 226 and 227 of the Constitution of India, the petitioner challenges the order dated 25.04.2025, passed by respondent No. 3, the Additional D.G.P./Inspector General of Prison, and Correctional Services, Maharashtra State, Pune, thereby refusing to grant the furlough leave to the petitioner.

3. The petitioner is convicted by the City Sessions Court, Mumbai in Special M.C.O.C. Case No. 10 of 2010, under Section 302, 120-B read with Section 34 of the Indian Penal Code and under Section 3 (1) and 3 (4) of the Maharashtra Control of Organized Crime Act, 1999 (for short "The M.C.O.C." Act) and sentenced to suffer imprisonment for life on 30.05.2018.

4. The petitioner claims to have undergone 15 years imprisonment so far. Furlough leave is rejected to him by the respondents due to the adverse police report and on the ground that as per the Government notification dated 02.12.2024, the prisoner who is convicted under the Central Act mentioned therein, is not entitled to furlough leave. The petitioner is aggrieved by this orders.

5. Heard the learned Advocate for the petitioner and learned APP for the Respondents-State.

6. Perused the report.

7. The petitioner has applied for furlough leave on 10.10.2024. By the Government Notification dated 02.12.2024 the Maharashtra Prisons (Furlough and Parole) Rules, 2024 were promulgated. As per Sub Rule 2 (e) of Rule 4, the prisoners who are convicted under the the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987), the Maharashtra Control of Organized Crime Act, 1999 (Mah. XXX of 1999), the Prevention of Terrorist Activities Act, 2002, (15 of 2002), the Protection of Children from Sexual Offences Act, 2012 (32 of 2012) or convicted for offence of gang rape and human trafficking, are not eligible for furlough leave.

8. This Court at Nagpur Bench in ***Criminal Writ Petition No. 899 of 2024 Arun Gulab Gawli vs. Deputy Inspector General (Prisons) (East) Nagpur and Another, decided on 07.01.2025***, has taken a view that the said notification will have prospective operation and shall govern the cases of furlough leave after 02.12.2024. This Court has followed the said decision in ***Writ Petition No. 789 of 2025 Sanjay Sahebrao @ Natha Pawar Vs. The State of Maharashtra and Others, decided on 19.08.2025***.

9. Coming to the facts of the present case, admittedly, the application of the petitioner for furlough leave is of dated 10.10.2024 i.e.

prior to the said Rules coming into force. Therefore, the reliance of the respondents on the said Rules while rejecting the application of the petitioner is erroneous and unsustainable.

10. The second ground on which the furlough leave is denied to the petitioner, is that the police report is adverse to him. In the report dated 25.04.2025 the Deputy Superintendent of Police, Central Prison, Chhatrapati Sambhajanagar it is clear that the petitioner was granted furlough leave from 08.07.2022 till 28.07.2022 and also from 23.01.2024 up to 21.02.2024 i.e. total (28 days). On both these occasions the petitioner had reported in time. It is further stated that by imposing strict conditions furlough leave can be granted to the prisoners/petitioner.

11. The Assistant Police Commissioner, Washi Division, New Mumbai has given adverse police report stating that the petitioner belongs to Nepali Gang and if he is released on furlough leave, there will be danger to the life and limb of the informant and the witnesses. The surety offered by the petitioner does not have immovable property.

12. Taking into consideration the fact that the petitioner was granted furlough leave in the year 2021 and 2024, there appears no substance in the adverse police report submitted by the Assistant Police Commissioner, New Mumbai. In the light of notification dated

17.08.2022 issued by the office of the Special Deputy Inspector General, Central Prison, Chhatrapati Sambhajanagar, statement that the surety of the petitioner is not having immovable property is not acceptable.

13. For the aforesaid reasons the impugned order being unsustainable in law and facts is quashed and set aside. The petition is allowed.

14. Rule is made absolute, in terms of prayer Clauses (C) & (D).

(SMT. VAISHALI PATIL-JADHAV)
JUDGE

(NITIN B. SURYAWANSHI)
JUDGE

mahajansb/