



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO. 252/2025

1. Kapil Ratan Shitole (C-6284),
Aged about 29 yrs., Occ. NA.
R/o. Station Vibhag, Murtizapur,
Tah. Murtizapur, Dist. Akola.

...PETITIONER

VERSUS

1. Deputy Inspector General Prison,
(East Region), Nagpur.
2. Superintendent of Jail,
Central Prison, Amravati.

RESPONDENTS

Mrs. Ratna Singh, Advocate for petitioner.
Mrs. N. Tripathi, Addl. Public Prosecutor for respondent Nos. 1 & 2.

CORAM : ANIL L. PANSARE AND
M. M. NERLIKAR, JJ.

DATE : 24.07.2025

ORAL JUDGMENT : (PER: M. M. NERLIKAR, J.)

Heard.

2. **Rule.** Rule made returnable forthwith. By consent of parties, heard finally.

3. The present petition is being filed under Articles 226 and 227 of the Constitution of India. It takes exception to the order dated 31.01.2025 passed by respondent No.1, Deputy Inspector General Prison (East Region), Nagpur, wherein the furlough leave application of the petitioner was rejected on the ground of Adverse Police Report and secondly on the ground that the petitioner is accused in Crime No.14/2021 registered with Police Station Murtizapur, Dist. Akola under Sections 20(B), 25 of Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS"), Sections 4, 25 of the Arms Act, Sections 50, 277 of the Motor Vehicles Act. The said case is pending with the Sessions Court at Akola as ST No. 34/2021.

4. We have heard learned counsel appearing for petitioner as well as learned Additional Public Prosecutor ("APP"). It is the contention of the petitioner that impugned order is passed without application of mind, as the petitioner was not convicted in the Crime No.14/2021 and the case is still pending and therefore, the respondent No.1 ought not to have considered the bar provided in the Notification dated 02.12.2024. Respondent No.1 has committed an error by applying Rule 4 (2)(e)(l) under Chapter II of Notification

dated 02.12.2024. Learned counsel for petitioner further contended that the Adverse Police Report of the petitioner is far away from the actual facts as the petitioner got bail in Crime No.14/2021 on 07.06.2021, and thereafter, no offence was registered against him. It is only in Crime No.191/2014 (Sessions Case No.134/2014), he was awarded punishment of life imprisonment which he is undergoing. There are no complaints against the petitioner and therefore, the Police Report is not based on actual facts. On the other hand, learned APP vehemently argued that the petitioner was convicted under Section 302 of the Indian Penal Code. The Notification dated 02.12.2024 bars the offender like the present petitioner. He is heavily relied on Rule 4 (2)(e)(i) under Chapter II of Notification dated 02.12.2024. He has also relied on the Police Report dated 01.01.2025 which was addressed to the respondent No.1 by the Additional Superintendent of Police, Akola and accordingly, he has supported impugned order dated 31.01.2025.

5. Upon careful perusal of the petition, documents annexed thereto and also arguments advanced by learned counsel appearing for parties at length, it is not in dispute that the petitioner was sentenced

to undergo life imprisonment under Sections 302 as well as 307 of the Indian Penal Code in Crime No.191/2014 in Sessions Case No.134/2014. It seems from the record that he was convicted under Sections 302, 307 of the Indian Penal Code for life imprisonment and under Section 148 of the Indian Penal Code for two years. Secondly, it is not in dispute that in the year 2021, Crime No.14/2021 was registered under the provisions of sections 20(B), 25 of NDPS Act, Sections 4, 25 of the Arms Act and Sections 50, 277 of the Motor Vehicles Act against the petitioner. The petitioner has undergone 3 years, 11 months and 10 days till 11.11.2024 and therefore, as he has undergone more than 3 years, he was eligible for furlough leave as per Rule 3(C) of the Prisons (Bombay Furlough and Parole) Rules, 1959. Accordingly, the petitioner applied for furlough leave by application dated 05.11.2024. After completing the formalities, respondent No.1 was pleased to reject the application of the petitioner on the ground that the petitioner is not entitled for furlough leave as there was bar contemplated under Notification dated 02.12.2024 and more specifically Rule 4 (2)(e)(i) under Chapter II of Notification dated

02.12.2024. There is another ground of rejection that there was an Adverse Police Report.

6. Upon careful perusal of the Notification dated 02.12.2024, it appears to us that the said provision deals with certain categories of prisoners (those who have been convicted), wherein one of the category is in respect of the convicts involved in the narcotic drugs. The Rule 4 (2)(e)(l) under Chapter II of Notification dated 02.12.2024 reads as under:-

“4. Categories of eligibility of prisoners for furlough.....

(2) The following prisoners shall not be eligible for furlough

.....

.....

(e) prisoners who are convicted under 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;

(l) prisoners, whose release is not recommended by an officer not below the rank of the Assistant Commissioner of Police or Deputy Superintendent of Police, on the grounds that their release is prejudicial to public peace, order and tranquillity;”

Perusal of said Rule shows that these Rules would not be applicable to those who are not yet convicted and their cases are pending with the Trial Court, therefore, we are not in agreement with the arguments advanced at the behest of learned APP that the said Rule will cover the petitioner. Rule 4 (2)(e)(l) under Chapter II of Notification dated 02.12.2024 specifically states that there would be bar of certain categories of prisoners who have been convicted under those prohibited categories, like NDPS, terrorist activities, MCOCA, etc. Therefore, respondent No.1 has utterly failed by applying said criteria of the Notification dated 02.12.2024 to the petitioner. It is not out of place to mention at this juncture that the said category would be only applicable to the convicts referred to hereinabove and not to the accused persons whose cases are pending in the Trial Court. It would be useful to refer to the definition of the ‘prisoner’ as provided in Rule 2(f) under Chapter I of Notification dated 02.12.2024 which defines

as “(f) ‘prisoner’ means the convicted prisoner.” Further, in Rule (1)(3) under Chapter I, under the heading of introduction, it is specifically stated that these Rules ‘shall apply to convicted prisoners’. Therefore, considering the above facts situation, there is no doubt in our mind that these Rules are applicable only to the convicts. However, the petitioner is yet not convicted in Crime No. 14/2021 registered under the provisions of the NDPS Act and therefore, these Rules of Notification dated 02.12.2024 will not be applicable.

7. The next ground on which application was turned down by respondent No.1 is that there is an Adverse Police Report. We have gone through the Police Report dated 01.01.2025 of the Additional Superintend of Police, Akola, wherein it is stated that if the furlough leave is granted to the petitioner, there would be danger to the family of the deceased. Further, it is stated that petitioner does not have any property nor he was married and the petitioner along with his relatives are undergoing life imprisonment, and therefore, if he was released, there is every possibility that he will commit another serious offence.

8. This issue was dealt with by Division Bench of this Court in the matter of *Sanjay Kisan Kadse Vs. State of Maharashtra and others*,

(2004) 1 Mah LJ 789, wherein this Court has observed in para 6

which reads as under:-

“6. It is unfortunate that in many matters, the competent Authorities have passed orders rejecting applications of prisoners for furlough leave on the grounds which are non est. This court as well as other High Courts from time to time have issued various directions in this regard and also categorically observed about the material, which would be required to be considered by the competent Authorities while considering the applications for grant or refusal of furlough leave. Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 clearly denotes contingencies in which furlough leave of the prisoner can be refused. Similarly, the competent Authorities are also required to consider the law laid down by the High Courts and the Apex Court in this regard and after such consideration, the competent Authorities are expected to pass orders one way or the other, which are sustainable in law. Similarly, in many matters, it is noticed by us that the orders passed by the competent Authorities rejecting the applications for furlough leave are in a very casual manner completely ignoring the provisions of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 and, therefore, the orders demonstrated total non-application of mind on the part of the competent Authorities and rendered them invalid in law. In many matters, the competent Authorities rejected the applications for furlough leave in the routine manner only on the basis of adverse Police reports, which are submitted on the basis of statements of witnesses of the opposite side and, therefore, as we have already observed hereinabove, such orders cannot be sustained. The competent Authorities, who are entrusted with the

powers of grant or refusal of furlough leave, which is the right of the prisoner, are expected to apply their mind to the facts and circumstances of the case keeping in view the contingencies mentioned in Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 and only thereafter, should express their opinion in this regard. Similarly, mere observations in the Police report that there is a likelihood of breach of peace if prisoner is released on furlough leave should not be the formal expression only to deprive the prisoner from availing the furlough leave. The Police Authorities should be in a position to substantiate their opinion by giving valid reasons for the same. We expect that in future all these factors will be kept in mind by the competent Authorities while considering the applications for grant or refusal of furlough leave.

7. In the instant case, the only ground on the basis of which the furlough leave of the petitioner is refused is the adverse Police report based on the statements of the prosecution witnesses and there is nothing on record to show that if petitioner is released on furlough leave, there is a likelihood of conflict between petitioner and witnesses and threat to the peace and tranquility in the area. Therefore, we are of the considered view that the ground on which furlough leave is refused to the petitioner by the competent Authority, is not proper and the order of rejection dated 5-7-2003 passed by the competent Authority is not sustainable in law.”

9. We have gone through the said report, however the apprehension of the Additional Superintend of Police does not sustain

in view of the fact that, there is no base for such apprehension. It is matter of record that the petitioner is undergoing life imprisonment in Crime No. 191/2014. There was no complaint from the side of the informant at any point of time that the petitioner indulged in threatening the witnesses or the informant. Therefore, the apprehension expressed by the Additional Superintendent of Police is not sustainable. It would be useful to refer to the order dated 10.07.2024 passed by this Court in Criminal Writ Petition No. 828/2024, wherein the Division Bench of this Court has observed that :-

“3..... 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.”

10. After considering the above facts and circumstances, we are of the considered view that respondent No.1 has committed gross error in law by relying on the Notification dated 02.12.2024 and also not applied his mind while passing order. In view of above facts and circumstances, we are passing the following order:-

I. Petition is allowed.

II. We hereby quash and set aside impugned order dated 31.01.2025 passed by respondent No.1 with a direction to release the petitioner on furlough leave for a period of 21 days as prayed for on the condition as the authorities concerned deem fit.

II. No order as to costs.

11. The criminal writ petition stands disposed of accordingly.

(M. M. NERLIKAR, J.)

(ANIL L. PANSARE, J.)