



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

CRIMINAL WRIT PETITION NO. 402 OF 2025

(Adesh @ Adya Anil Khairkar (C-5548) Vs. Deputy Inspector General Prison & Anr.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Ms Ratna Singh, Counsel for the petitioner.
Ms S.N. Thakur, A.P.P. for the respondents/State.

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CORAM : ANIL L. PANSARE AND
M.M. NERLIKAR, JJ.
AUGUST 5, 2025

In response to order dated 23/7/2025, the learned A.P.P. submits that benefit of furlough has been not denied on the count that a case under the provisions of the Maharashtra Control of Organised Crime Act, 1999, is pending against the petitioner, but the relief has been refused on two counts; one is that there is an adverse police report, and another is that the petitioner has a tendency of committing offence.

2] In support, the learned A.P.P. has invited our attention to the offence registered against the petitioner vide Crime No. 590/2022 under Sections 307, 384, 143, 147, 148, 149, 506 and 120B of the Indian Penal Code, 1860 (for short "I.P.C.") and Sections 3 and 25 of the Arms Act, 1959. The chargesheet has been filed. The learned A.P.P. submits that this offence has been committed when the petitioner was released on furlough.

3] Thus, according to her, the petitioner has a tendency to indulge into illegal activities, and on that

count, the instant request to release him on furlough is rejected.

4] The learned Counsel for the petitioner submits that the offence under Section 307 of the I.P.C. has been wrongly attributed. She submits that the learned Sessions Court, while releasing the petitioner on bail, has observed so.

5] We have accordingly gone through the order passed by the learned Sessions Court to find that no such finding is recorded. Thus, the Counsel for the petitioner has made an incorrect statement that the Sessions Court has rendered a finding that the Investigating Agency has wrongly invoked provision under Section 307 of the I.P.C.

6] That being so, and since the petitioner appears to have indulged into illegal activities, we do not find any error in the impugned order rejecting the request made by the petitioner to release him on furlough.

7] The petition is accordingly dismissed.

(JUDGE)

(JUDGE)

8] Later on, learned counsel for the petitioner has mentioned the matter saying that the Sessions Court has indeed made a statement that Section 307 of the I.P.C. has been wrongly invoked. She seeks permission to read relevant paragraph of the order. We have put to notice the counsel that if the judicial time of the Court is unnecessarily wasted, further strictures will be passed, to

which, counsel for the petitioner submits that she is ready to take risk. Accordingly, we heard the counsel.

9] Learned counsel for the petitioner has invited our attention to paragraph no. 20 of the order dated 20-4-2024 passed by the Special Court, Yavatmal below Exhibit 100 in Special Case bearing no. 29/2023, which reads as under :-

“20. Now, averting towards remaining set and bunch of allegations, Bare perusal of material placed on record it reveals that the role attributed to the applicant is that when the co-accused Rohit Jadhav refused for paying liquor bill quarrel erupted inter-se the informant and accused persons. During said brawl the applicant assaulted the informant by sticks and the co-accused fired gun shot in the air so also demanded ransom amount of Rs. 5000/- per month from the informant as protection money by giving him death threats. The role attributed towards the applicant is less petite than other co-accused. As of now the said Desi Cutta is already recovered at the instance of the accused. It is not the case that he opened said fire upon the informant. It is not alleged that applicant as such assaulted the informant. Till date it is not shown by the prosecution the specific notification issued by the collector Yavatmal in reference with the Arms Act applicable to the District Yavatmal. Now there is nothing to be discovered and recovered at the instance of the applicant. Now the informant is discharged from the hospital and following his daily pursuit. As such further incarceration of the applicant accused for any sort of reasons does not require for specially when he is ready to attend trial without fail. To protect the complainant and witnesses certain terms and conditions can be

*imposed on the accused. As the final report in the crime has already been placed, so what is principally required to be seen is as to whether the applicant's presence can be procured during the trial of the case or not. The accused/ applicant is permanent resident of Yavatmal. He is having his roots therein. **There are no likely chances that he would flee from justice.** Having pore over entire material placed on record, I am of the opinion that the presence of the accused for facing trial can be secured and there seems no hurdle in the same. As regards object and motive of such ill act is concerned it is a matter of merit. **It would not be worthy to go into the orbit of motive and intention, at this stage.** Thus, merely on the basis of aforesaid evidence, it is not desirable to junk instant bail application out-rightly."*

10] As could be seen, what has been noted in paragraph no. 20 is that the applicant i.e. petitioner herein assaulted the informant by sticks and the co-accused fired gun shot in the air and demanded ransom amount of Rs. 5000/- per month from the informant as protection money by giving him death threats. The Court then mentioned that the role attributed to the applicant is *less petite* than other co-accused. According to petitioner's counsel, the word "*less petite*" means negligible and accordingly, she submits that the applicant has played a trivial role. We find this understanding of the counsel to be misreading of what has been noted by learned Special Court. The use of words "*less petite*" is in context with the role played by the co-accused. Thus, what is meant is that the role played by the petitioner is of lesser gravity than that of co-accused. Such finding cannot be taken aid of to argue that the provision under

Section 307 of the I.P.C. has been wrongly/ incorrectly invoked against the petitioner.

11] The petitioner is facing trial for the offences punishable under Sections 307, 384 read with Sections 149, 120-B of the I.P.C. In the circumstances, even if, he has played a role of lesser gravity as regards physical assault, he will be equally liable for punishment in terms of Section 149 read with 120-B of the I.P.C.

12] It is unfortunate that counsel has wasted time of the Court without properly reading the findings of the Special Court. We accordingly further certify that the submissions made by the petitioner's counsel are incorrect and no relief could be granted for such assistance to the Court. The order of dismissal of petition stands certified accordingly.

(JUDGE)

(JUDGE)

Sumit/wasnik