



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

CRIMINAL WRIT PETITION NO.899 OF 2024

Arun Gulab Gawli,
Aged 70 years, C-8535,
Presently Nagpur Central Prison,
Nagpur.

... Petitioner

V/s

1. Deputy Inspector General (Prisons)
(East) Nagpur.

2. The Superintendent Central Prison,
Nagpur.

... Respondents

Shri Mir Nagman Ali, Advocate for petitioner.
Smt Nandita R. Tripathi, Additional Public Prosecutor to respondents.

CORAM : NITIN W. SAMBRE AND MRS VRUSHALI V. JOSHI, JJ.

DATE : January 07, 2025

P. C.

1. Heard.

2. Vide order dated 14/10/2024 which is impugned in the present petition, the petitioner who is convicted under the provisions of Maharashtra Control of Organized Crime Act, 1999 (MCOCA) is refused to be released on furlough.

3. The counsel for the petitioner while questioning the impugned order, would invite our attention to the fact that the petitioner has already undergone 15 years 11 months and 18 days of punishment pursuant to conviction awarded to him under the provisions of MCOCA. He would further claim that the adverse police report against the petitioner was based on the ongoing elections of the Legislature Assembly which are already over.

It is further claimed that the other reasons which are cited are not germane to be the cause for refusing request of the petitioner to be released on furlough.

4. As against above, Smt Tripathi, the learned Additional Public Prosecutor would invite our attention to the notification dated 02/12/2024 issued by the respondent State Government. According to her, Rule 4 (2)(e) of the Maharashtra Prisons (Furlough and Parole) Rules, 2024 (for short the Prison Rules, 2024) does not confer any right in the petitioner to claim relief of furlough as he is convicted under the provisions of MCOCA. Rule 4(2)(e) reads thus :

4. Categories of eligibility of prisoners for furlough :

(1) ...

(2) The following prisoners shall not be eligible for furlough, namely : -

(a) .. (b)... (c).. (d)...

(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, (12 of 2002), the Protection of Children from Sexual Offences or convicted for offence of gang rape and human trafficking.

As such the learned Additional Public Prosecutor would urge that the petition is liable to be rejected.

5. Apart from above, the learned Additional Public Prosecutor would invite our attention to the police report, registration of offences against the family members and the political background of the daughter of the petitioner so as to claim that in case he is so released on furlough, there is a possibility of disturbance of law and order.

6. We have appreciated the aforesaid submissions.

Firstly, we are required to deal with the embargo that is created under

the amended Rule (4)(2)(e) of the Prisons Rules, 2024 which is sought to be relied by the learned Additional Public Prosecutor as was notified by the State Government on 02/12/2024. The said Rules are prospective in nature and as such shall be applicable from 02/12/2024 onwards. The application of the petitioner for grant of furlough was received by the respondent Jail Superintendent on 19/08/2024. As a sequel of above, the position of law on the date of the petitioner's application is required to be taken into account and not the date on which the amended Rules were notified which have a prospective effect from 02/12/2024. In such an eventuality, the embargo created in regard to grant of furlough to such accused persons who are convicted under the provisions of MCOCA by virtue of the Rules notified on 02/12/2024, would not be attracted to the case at hand. As such the contention of the learned Additional Public Prosecutor to that effect is liable to be rejected.

7. As far as the second objection raised by the learned Additional Public Prosecutor with regard to the conduct of the wife of the petitioner and his daughter being former Corporator by itself would not create an embargo on the right of the petitioner to claim furlough. This Court in the order dated 26/09/2023 delivered in Criminal Writ Petition No.534/2023 (*Arun s/o Gulab Gawli vs. Deputy Inspector General (Prisons), (Est), Nagpur and anr.*) has already taken note of release of the petitioner on furlough almost on 12 occasions pursuant to the orders of this Court and has been granted furlough inspite of there being adverse police reports.

8. The reason cited in the impugned order in respect of the elections of Legislative Assembly which were to be conducted on 20/11/2024 no more exists as the elections are already over. Hence, for the aforesaid reasons we are of the view that the order impugned dated 14/10/2024 whereby the Jail Authority has refused to grant furlough to the petitioner cannot be said to be sustainable and as such it is hereby quashed and set aside.

9. We direct the Jail Authorities that the petitioner be admitted to furlough for 28 days in accordance with the provisions of the Prisons Rules. While ordering release on furlough, appropriate conditions may be imposed on the petitioner by the Competent Authority.

9. In view of the aforesaid, the writ petition stands allowed.

(Mrs Vrushali V. Joshi, J.)

(Nitin W. Sambre, J.)