

(2020) 11 BOM CK 0016
In the Bombay High Court
Case No : Criminal Writ Petition No. 376 Of 2020

Dinesh

APPELLANT

Vs

Deputy Inspector General Prison And Ors

RESPONDENT

Date of Decision : 05-11-2020

Acts Referred:

Indian Penal Code, 1860 — Section 147, 148, 149, 302, 307, 342, 376(D), 452, 506

Citation : (2020) 11 BOM CK 0016

Hon'ble Judges : R. K. Deshpande, J; V.M. Deshpande, J

Bench : Division Bench

Advocate : Raju Kadu, I.J.Damle

Final Decision : Allowed

Judgement

V.M. Deshpande, J

1. Heard learned counsel Shri Raju Kadu for the petitioner and learned Additional Public Prosecutor Shri I.J.Damle for respondents/State. Rule. Rule is made returnable forthwith. Heard finally by consent of parties.

2. By the present writ petition, the petitioner is challenging order dated 15.7.2020 passed by respondent No.1/Deputy Inspector General Prison, East, Nagpur rejecting an application filed on behalf of the petitioner for releasing him on furlough leave. Another prayer, that is claimed by the petitioner, is that he be released on furlough leave.

3. The petitioner was convicted in Sessions Trial No.302/2014 for offences punishable under Sections 302, 147, 148, 149, and 307 of the Indian Penal Code by learned Additional Sessions Judge at Amravati on 2.11.2019 by which the petitioner was directed to suffer life imprisonment.

4. As on today, at no point of time, the petitioner was released on furlough leave.

5. On being entitled to move an application for grant of furlough leave, an application was moved. However, the same was rejected by Authority on ground

that there is an adverse report against the petitioner because of poor financial condition of his mother Babybai Ashokrao Athawale and another reason for rejecting prayer for furlough leave was that if the petitioner is released on furlough leave, there is a possibility that he may indulge into other offences.

6. Learned Additional Public Prosecutor Shri I.J.Damle for respondents/State, has filed a reply on behalf of the Superintendent of Amravati Central Prison, Amravati to oppose the present writ petition on the ground that another case is pending against the petitioner i.e. RCC No.89/2016 for offences punishable under Sections 376(D), 342, 452, and 506 of the Indian Penal Code.

7. Grant of furlough is a right in favour of convict, if he is otherwise entitled.

8. In the present case, prayer is opposed on behalf of the Authority for reason that the mother of the petitioner who is proposed surety is financially feeble. We are afraid that financial constraints of surety can be impediment to release the convict on furlough leave which is his right and if he is found to be suitable to be released on furlough leave.

9. Insofar as other objection is concerned that another case i.e. RCC No.89/2016 is pending, here we would like to observe that offences punishable under Sections 376(D), 342, 452, and 506 of the Indian Penal Code are triable by the Court of Sessions and as per reply, the RCC case is there which postulates that even the case is not committed to the Court of Sessions. Further, guilt or innocence of the petitioner in the said crime is yet to be determined by the prosecution.

10. Another reason that is put forth before the Court to oppose the prayer for grant of furlough leave that if the petitioner is released on furlough leave, there is a possibility that he may indulge into attack and gang war, for reaching to this satisfaction as reached by the Authority below, there is no material available on record. In our view, the Authority committed an error to reach to such conclusion.

11. In this view of the matter, we pass following order:

ORDER

(1) The criminal writ petition is allowed.

(2) Order dated 15.7.2020 passed by respondent No.1/Deputy Inspector General Prison, East, Nagpur rejecting application filed on behalf of the petitioner to release him on furlough leave is hereby quashed and set aside.

(3) After complying the requirement, the petitioner be released on furlough leave.

Rule is made absolute in above terms.