

(2022) 05 BOM CK 0011

In the Bombay High Court

Case No : Criminal Writ Petition No.197 Of 2022

Kailash @ Mahesh

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 02-05-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Prisons (Bombay Furlough And Parole) Rules, 1959 — Rule 4(4), 4(12)
Indian Penal Code, 1860 — Section 109, 120(b), 302
Maharashtra Control Of Organized Crime Act, 1999 — Section 3(1)(i), (ii), 3(2), 3(4)
Arms Act, 1959 — Section 4, 25

Citation : (2022) 05 BOM CK 0011

Hon'ble Judges : V.M.Deshpande, J; Amit B.Borkar, J

Bench : Division Bench

Advocate : Nitesh Samundre, N.R.Tripathi

Final Decision : Allowed

Judgement

Amit B.Borkar, J

1. Heard learned counsel Shri Nitesh Samundre for the petitioner and learned Additional Public Prosecutor Mrs.N.R.Tripathi for the State. Admit. Heard finally by consent of learned counsel for respective parties.
2. By this petition, under Articles 226 and 227 of the Constitution of India, the petitioner challenges order dated 27.9.2021 passed by the Deputy Inspector General of Prisons, East Region, Nagpur whereby the first application of the petitioner for grant of furlough leave has been rejected on the ground that the petitioner is not eligible for grant of furlough leave as per Rule 4(4) and 4(12) of the Prisons (Bombay Furlough and Parole) Rules, 1959.
3. The petitioner is convicted for offences punishable under Sections 120(b), 109, and 302 of the Indian Penal Code and under Section 3(1)(i), (ii), 3(2), and 3(4) of the Maharashtra Control of Organized Crime Act, 1999 read with Sections 4 and 25 of the Arms Act and the petitioner is undergoing imprisonment for life.

4. According to learned Additional Public Prosecutor for the State, by now, the petitioner has undergone almost eight years of imprisonment.

5. On 10.6.2021, the petitioner applied for grant of furlough leave for the first time. Pursuant to the same, respondent No.2 called for police report and on the basis of the said police report the order impugned in the petition has been passed.

6. On 28.3.2022, this Court issued Notices to respondents and in pursuance to said Notices respondent No.2 filed a reply stating in it that the police report is adverse to the petitioner and, therefore, the petitioner is not eligible for grant of furlough leave as per Rules of 1959.

7. Having considered order impugned, reply filed by respondent No.2, and perused police report, we find that the police report on the basis of which apprehension that the petitioner will misuse the liberty if he is granted is lacking in details as to basic facts. Careful perusal of the reply shows that villagers of village where the petitioner intends to reside have no objections if the petitioner is released on furlough leave. In such view of the matter, order rejecting application of the petitioner for grant of furlough leave by respondent No.1 is not justified. Hence, we pass following order:

ORDER

(1) The criminal writ petition is allowed.

(2) Order dated 27.9.2021 passed by the Deputy Inspector General of Prisons, East Region, Nagpur is hereby quashed and set aside.

(3) The petitioner is directed to be released on furlough leave on such terms and conditions as respondent No.1 deems fit and proper within a period of one week from the date of receipt of order of this Court.

The criminal writ petition stands disposed of accordingly.