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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.5691 OF 2018

Madhukar Nana Khade
(through jail) ...Petitioner
vs.
The State of Maharashtra & Ors. ...Respondents

Ms M.H.Mhatre, APP for the respondent-State

CORAM : A.S.OKA, &
A.S.GADKARI, JJ.
DATE : JANUARY 31, 2019

P.C.:

1 Rule. The learned APP waives service. The learned APP has tendered a copy of a chart dated 9th January 2019 signed by the Additional Senior Jailor of Yerwada Central Prison which is taken on record and marked 'C-1' for identification.

2 The petitioner applied for grant of furlough under the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short 'the said Rules'). The Competent Authority rejected the application. Even the appeal preferred by the petitioner against the said order has been dismissed.

3 Perusal of the order dated 2nd November 2018 passed by the Appellate Authority shows that the first ground for rejection is that when the

petitioner was released on parole in the year 2001, he did not report back to the jail and after expiry of period of 3188 days, he was arrested by the police and brought back to the jail. The second ground is that the police report records an apprehension that if the petitioner is released on furlough, he may not return to the jail and will abscond. The third and last ground is based on Sub-Rule 20 of Rule 4 of the said Rules which provides that the prisoner is not entitled to furlough if in the opinion of police/Prison Authority the petitioner is likely to jump furlough.

4 The chart tendered by the learned APP shows that on 16th September 2013 and on 19th September 2015 the petitioner was granted parole and he returned back immediately after the expiry of period of parole. The chart shows that on account of delay of period of 3188 days in returning to jail, punishment of cutting remission has been imposed upon the petitioner. In any case, in the year 2013 and 2015, the petitioner was released on parole and returned back to jail immediately after the period of parole was over. Therefore, there is no basis for the apprehension that the petitioner will abscond if he is released on furlough. None of aforesaid grounds can be sustained.

5 Accordingly, the petition must succeed. Hence, we pass the following order:

- (I) The impugned orders dated 6th August 2018 and 2nd November 2018 are hereby set aside;
- (II) We direct the Competent Authority to pass a fresh order granting furlough to the petitioner subject to appropriate terms and conditions. Such order shall be passed by the Competent Authority within a period of two weeks from the date on which this order is communicated by the Office of Public Prosecutor;
- (III) Even if furlough is granted as aforesaid, the same shall be treated furlough for the year 2018;
- (IV) Rule is made absolute on above terms.

(A.S.GADKARI,J.)

(A.S.OKA,J.)