



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

6 CRIMINAL WRIT PETITION NO. 851 OF 2024

GANESH BHAURAO GHATOL C. NO.10048
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for petitioner : Ms. Sharada P. Chate
APP for the respondent – State : Mr. V.K. Kotecha
...

**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 06 MAY 2024

ORAL ORDER (MANGESH S. PATIL, J.) :

Heard both the sides.

2. This is a petition under Article 226 of the Constitution of India by a prisoner serving life imprisonment, aggrieved by the fact that in spite of the D.I.G. (Prison) having granted him furlough for a period of 28 days by the order dated 11-03-2024, the Superintendent of Central Prison, Harsool, Chhatrapati Sambhajinagar has not been releasing him.

3. It is being pointed out that the order granting furlough was passed even before the model code of conduct was notified with effect from 16 March 2024. It appears that the Superintendent of Central Prison, in the wake of such model of conduct indulged in some communication with the S.D.P.O. The S.D.P.O., Itwara, Nanded, by his

communication dated 25-04-2024 raised an objection for the reasons mentioned therein. The S.D.P.O, in turn, had relied upon the enquiry and the report of A.P.I. Sonkhed Police Station.

4. Irrespective of the model code of conduct is in place or otherwise, in our considered view, once the competent authority has passed an order granting furlough, the initiative taken by his subordinate Superintendent of Central Prison, Harsool referring to the supervening event of promulgation of the model code of conduct in the wake of Lok Sabha election, is grossly erroneous and even would tantamount to dereliction of the order passed by the superior officer.

5. We have not been pointed out any rule demonstrating any such power in the Superintendent of Central Prison to sit over the order granting furlough passed by the D.I.G. (Prison).

6. Assuming for the sake of arguments that due to the supervening event of model code of conduct coming in force, the Superintendent of Central Prison wanted to act safely, he should have solicited directions from the superior officer i.e. D.I.G. (Prison). He does not seem to have undertaken any such exercise by keeping his superior officer informed about his attempt to consider this aspect. This has resulted in an awkward situation where the order granting furlough is still in operation and the Superintendent of Central Prison, Harsool is sitting over it, rather defying it.

7. Any reference to rule 4(19) of the Bombay (Parole and Furlough) Rules, 1959, by him is unmindful of the fact that this is not the stage to consider after passing of the order granting furlough leave. Otherwise, it would be an endless matter. We sternly deprecate the conduct of the Superintendent of Central Prison, Harsool, in refusing to obey the order granting furlough leave passed by the D.I.G. (Prison), Chhatrapati Sambhajinagar.

8. We allow the writ petition.

9. The Superintendent of Central Prison, Harsool, Chhatrapati Sambhajinagar shall immediately release the petitioner if the conditions in the order granting furlough are obeyed.

10. However, in spite of this decision, we direct the Superintendent of Central Prison, Harsool to file affidavit to substantiate the stand being taken by him.

11. The affidavit shall be filed before the next date.

12. Stand over to 10 May 2024.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/