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

WRIT PETITION NO.793 OF 2023

Pralhad Feku Gupta
Aged 26 years,
R/o. At. Post.
Sinduria Bazar, Ward no.2,
Tah. & Dist. Maharajganj (U.P.)
(C/11286, Nagpur Central Prison,
Nagpur) ..... PETITIONER

...V E R S U S...

1] Special Inspector General of
Prison (East Region), Nagpur.

2] Superintendent of Jail,
Central Prison, Nagpur. ..... RESPONDENTS

Ms. Sonali Khobragade, Advocate for Petitioner.
Ms. Nandita Tripathi, APP for Respondent Nos.1 and 2/State.

CORAM: SMT. VIBHA KANKANWADI AND
MRS. VRUSHALI V. JOSHI, JJ.

DATE OF RESERVING THE JUDGMENT : 24.07.2024
DATE OF PRONOUNCING THE JUDGMENT : 01.08.2024

JUDGMENT: (PER SMT. VIBHA KANKANWADI, J.)

The petitioner, who is a convict invokes constitutional powers of this Court under Articles 226 and 227 of the

Constitution of India to challenge order dated 11.09.2023 passed by respondent no.1 i.e. Special Inspector General of Prison, Nagpur thereby refusing the furlough leave to the petitioner.

2. Heard Ms. Sonali Khobragade, learned Advocate for the petitioner and Ms. Tripathi, learned Additional Public Prosecutor for respondent nos.1 and 2/State.

3. It is vehmently submitted on behalf of the petitioner that the petitioner is undergoing imprisonment for life for the offences punishable under Sections 302, 449, 436 and 201 of the Indian Penal Code. He has undergone imprisonment for four years, five months and twenty five days. He had applied for releasing him on furlough leave for twenty eight days by application dated 08.05.2023. The reason he has given in the furlough leave application is to spend quality time with his family, and furlough leave is his legal right. However, the leave has been refused. It appears that the Superintendent of Police, Maharajganj, District Maharganj in Uttar Pradesh gave negative report and therefore, the application has been refused. It cannot be considered as a good ground to reject the furlough leave. The surety holder is ready to stand as a surety for the petitioner. The petitioner is originally from Uttar Pradesh and his family stays

there. He has a right to look after his family and therefore, the impugned order deserves to be set aside.

4. Learned APP is relying upon the affidavit-in-reply by the respondent no.2 and submits that the petitioner has been awarded three imprisonment for life, in a single case for offences punishable under Sections 302, 449 and 436 of IPC. He has been awarded imprisonment for life separately. Though, it is then stated that all the sentences should run concurrently, yet the gravity of the offence is required to be considered. The present petitioner is unmarried and aged 26. There is every possibility that he would go absconding, if released on furlough leave. As per the report submitted by Superintendent, Thana, Sinduria Bazar, the petitioner cannot be permitted to be released on furlough leave. The learned APP also relies on provision in Rule 4(4) of the Bombay Furlough and Parole Rules, 2018. In view of provisions in Clause 4-A the petitioner is not entitled to be released on furlough leave, so also the provision of Rule 17 in Chapter 37 of Maharashtra Prison Manual disentitle him from furlough leave. The petitioner was granted leave earlier but he has not availed the same. The petitioner has not availed the remedy of filing an appeal before Inspector General of Prisons and has directly came

before this Court and therefore, the petition is not maintainable.

5. At the outset, it is to be noted that the report on which the impugned order is based i.e. the report submitted by Superintendent of Police, Maharajganj, Uttar Pradesh appears to be in respect of the earlier application which was given by the petitioner when he was supposed to attend marriage of his relative. We can get the reference of the same in the report submitted by the Police from Uttar Pradesh that marriage was supposed to be held in February, 2024 for which he had made application prior to 13.11.2023 and by letter dated 13.11.2023 the report from Uttar Pradesh police was called which they have given on 12.12.2023. The earlier order has not been produced on record. However, it also appears that simultaneously, he had filed the application for furlough leave around 05.05.2023, impugned order refers to the report from Uttar Pradesh Police dated 26.07.2023. The said report of 26.07.2023 clearly states that the mother of the petitioner is ready to take surety ship and she is in a position to control the petitioner. It is also mentioned that if the petitioner is granted leave then it will not create any law and order situation in Uttar Pradesh as the offence was committed in Maharashtra. Only on the ground that the petitioner is still

unmarried, aged 26 then possibility of his flee away cannot be ruled out is the reason on which the application has been rejected. We do not consider this to be a good ground, even if the police authority gave adverse report yet the sanctioning authority must consider the overall situation and whether the possibility that is expressed can be said to be a true forthcoming possibility. In other words, the respondent no.1 cannot accept the report of the police blindly.

6. The purpose of parole or furlough leave is to grant the victim an environment to connect with his family. The long incarceration without allowing the inmate to meet his family is not good for the society as well as to the individual inmate. He has to manage the responsibility of his family by intermittently visiting the house. Appropriate conditions can be imposed to rule out the possibility of chance of fleeing away, and therefore, the impugned order deserves to be set aside with direction to grant the same by respondent no.1. Hence, we allow the petition and pass following order:

ORDER

[i] The impugned order dated 11.09.2023 passed by respondent no.1 i.e. Special Inspector

General of Prison, Nagpur is hereby quashed and set aside.

[ii] Respondent no.1 is directed to consider the application of the petitioner for furlough leave afresh and proceed to grant for appropriate period with appropriate conditions. Such order to be passed within a period of three weeks from today.

(MRS. VRUSHALI V. JOSHI, J.) (SMT. VIBHA KANKANWADI, J.)

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