

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/SPECIAL CRIMINAL APPLICATION NO. 4640 of 2023**

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NARAYAN @ NARAYAN SAI @ MOTA BHAGWAN S/O ASHARAM @  
ASHUMAL HARPALANI  
Versus  
STATE OF GUJARAT

=====

Appearance:

MR. ZUBIN BHARDA WITH MR. RAJENDRA D JADHAV for the Applicant(s)  
No. 1

MR. R.C.KODEKAR, APP ASSISTED BY MS. M.H.BHATT, APP for the  
Respondent(s) No. 1

RULE SERVED for the Respondent(s) No. 2,3

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**CORAM: HONOURABLE MS. JUSTICE NISHA M. THAKORE**

**Date : 08/06/2023**

**ORAL ORDER**

[1] This petition is filed at the instance of the petitioner-convict invoking extraordinary writ jurisdiction of this Court under Article 226 read with Articles 14 and 21 of the Constitution of India, challenging the order dated 15.02.2023 passed by the respondent authority on an application dated 31.05.2022 preferred by the petitioner, seeking furlough . The petitioner has also prayed for further relief to release him on furlough leave for the grounds raised in the present petition.

[2] For considering the controversy involved in the matter, the brief facts giving rise to the present present petition are required to be reproduced as under:

[2.1] The petitioner was arrested on 04.12.2013 in connection with the FIR being I-C.R.No. 31 of 2013 under Sections 376(2)(C), 377, 354, 344, 357, 342, 323, 504, 506(2), 508, 120(B), 212, 153 and 114 of the Indian Penal Code, 1860 registered with the Jhangirpura Police Station, Surat.

[2.2] Upon completion of investigation, the charge-sheet came to be filed against the petitioner and it culminated into Sessions Case No. 141 of 2014, which was tried before the Court of 2nd Additional Sessions Judge, Surat. At the end of the trial, the learned Sessions Judge was pleased to convict the petitioner and was sentenced to suffer rigorous imprisonment for life.

[2.3] The petitioner had approached this Court by challenging aforesaid order of conviction by filing the appeal which was registered as Criminal Appeal No. 1756 of 2019 and the same has been admitted by this Court vide order dated 17.12.2019. The same is pending for final adjudication. The jail remarks have come

on record along with an affidavit filed by the State. It is transpired from the jail remarks that the petitioner has undergone a sentence of almost 9 years 4 months and 12 days. The petitioner has been released on four occasions as contented by him. First on 06.04.2015 on temporary bail for a period of three weeks, second on 05.02.2019 on temporary bail for a period of two days followed by 1st furlough leave, which was granted by this Court pursuant to the order dated on 05.12.2020 and lastly, on 31.01.2022 again on temporary bail for a period of four days.

[2.4] Considering the period of incarceration and as per rules i.e. The Prisons (Bombay Furlough And Parole), Rules 1959, the petitioner claims to be entitled to second and third furlough leave. The petitioner, therefore, approached the respondent authorities seeking furlough by an application dated 31.05.2022. It is contended by the petitioner that the respondent authority had set tight over such application for a period over nine months and having failed to pass appropriate order on such application, the petitioner was constrained to approach this Court invoking the constitutional jurisdiction by filing writ petition being Special Criminal Application No. 2179 of 2023. It is further contended that

by the petitioner that respondent authority ultimately proceeded to pass the impugned order dated 15.02.2023 refusing the furlough leave mainly on the ground that release of the petitioner would cause the issue of public peace and tranquility. The respondent authority had mainly relied upon the prevision incidence-cum-circumstances. It is contended by the petitioner that the authorities have relied upon past incidence which were otherwise prevailing when first furlough leave was granted by this Court and in a mechanical manner has passed such order.

[2.5] The petitioner had therefore moved the draft amendment in the pending petition seeking permission of this court to challenge the aforesaid impugned order dated 15.02.2023. The petitioner has relied upon the averments made in the draft amendment however, this Court by order dated 24.03.2023 considering the fact that the original application seeking furlough leave filed by the petitioner pending before respondent authority being decided, disposed of the petition with a liberty to raise all contentions available to the petitioner-convict to challenge the impugned order dated 15.02.2023 passed by the respondent state authority. Hence, the petitioner has once again approached this Court by

filing this petition seeking the prayer of release on furlough leave.

[3] Mr. Zubin Bharda, learned advocate has appeared with Mr. Rajendra Jadhav, learned advocate on record for the petitioner.

[4] This Court, having considered the grounds raised in the petition, issued a rule upon the respondent State authorities and had directed the State to file an affidavit. The respondent State authorities have filed an affidavit in reply through one Dhaval kumar P. Bhatt, in-charge, Jail Superintendent, Lajpor Central Jail, Surat on 04.05.2023 along with annexures. The respondent State has heavily placed reliance upon jail remarks and order passed by this Court on various occasions on the application made by applicant-convict including one seeking 1st furlough leave. The respondent State has also placed on record order dated 21.03.2022 passed by the Division Bench of this Court on interim application of temporary bail moved by petitioner in pending criminal appeal as well as order dated 24.06.2021 passed by coordinate bench of this Court in Special Criminal Application No. 5199 of 2021, whereby the 2nd furlough leave came to be initially granted by this Court for a period of two weeks, which was

subsequently challenged by the State by filing Special Leave Petition before Hon'ble Apex Court. The order dated 20.10.2021 passed by the Hon'ble Apex Court in such appeal has been placed on record in support of their submissions. Reliance is also placed on status of pending criminal appeal being Criminal Appeal No.607 of 2023 in the case of the father of petitioner. The respondent State has referred to an application dated 09.03.2023 addressed to the Registrar of this Court seeking furlough leave on the ground raised in the present petition, which is treated as application through jail and is registered as Special Criminal Application No. 4192 of 2023.

[5] Responding to the affidavit filed by the respondent State, the petitioner has filed an affidavit in rejoinder on 06.06.2023. The petitioner has placed the particulars of criminal activity alleged against the petitioner, which according to the petitioner, he is not involved in such FIR and has not been chargesheeted. According to the petitioner, out of the seven circumstances/ criminal activities alleged against petitioner, only two criminal cases have been registered against petitioner. The petitioner has also questioned the validity of the impugned order by referring to the proviso to Sub

Rule 2 of Rule 8 and has submitted that it would be the Commissioner of Police or the District Magistrate who can recommend to the jail authority to release petitioner on furlough leave based on the assessment of the circumstances, which in his case has been wrongly refused in guise of public peace and tranquility. It is submitted that in the present case the recommendation given to the sanctioning authority with regard to the effect of the petitioner release is neither by Commissioner of Police or District Magistrate. Such an opinion is submitted by the Deputy Commissioner of Police, who has acted on an opinion given by Assistant Commissioner of Police, who cannot be treated equivalent to the Commissioner Police. The petitioner has highlighted the circumstances where his presence is required. It is contended that father of the petitioner is in Jodhpur Central Jail, for about 10 years and is aged 87 years and is facing difficulties because of his old age and is unable to handle the legal procedure. He needs to consult lawyers for his case by filing an appeal in the Higher Forum. The petitioner being his only son is expected to take care of such a situation. The petitioner has also raised grounds of his own ailment. Reliance is also placed on the fact that the mother of the petitioner is suffering from various

diseases and is on wheelchair and as a son he is expected to take care in absence of his father.

[6] Mr. Zubin Bharda, learned advocate has, at the outset, submitted that the period undergone by the petitioner is almost 9 years 8 months. The respondent state authority has rejected the application of the petitioner seeking furlough mainly on the four grounds. The respondent authority has considered the ground that there is threat to the witnesses of the pending criminal cases. Secondly, the respondent State authority has taken into consideration the criminal antecedents of the petitioner. Thirdly, the jail conduct of the petitioner is taken into consideration and lastly on the ground that the State authority has expressed apprehension that the petitioner may abscond.

[7] Mr. Bharda has further highlighted the fact that the petitioner was released on four occasions when these same circumstances existed. He was released on temporary bail three times. The petitioner was also released on his first furlough leave, which was granted by this Court. He has further submitted that on none of these occasions, the petitioner has breached the conditions

imposed by this Court. He further submitted that the seven previous circumstances including one with regard to keeping of one mobile phone with him and remaining in contact outside the jail is concerned where very much existed on the date when the first furlough leave was granted by this Court on 05.12.2020. In fact, despite being released on all these occasions, not a single instance is reported with regard to public peace and tranquility. He therefore submitted that the opinion of the authority with regard to disturbance to the public peace and tranquility is merely based on conjecture and surmises and the apprehension is false and without any basis. Mr. Bharda has emphasized the fact that since his last release no untoward incident had occurred during this interregnum period. He, therefore, urged this Court that considering the three grounds raised in the application as well as in the present petition, may kindly be looked into by this Court, more particularly, the period undergone by the petitioner.

[8] Responding to the stand taken by the State Government in the affidavit in reply, Mr. Bharda invited attention of this Court to the jail remarks more particularly column no. 20, which reflects the jail conduct of the petitioner. He submitted that as against three

instances, minor penalties have been imposed, which has already been undergone by the petitioner. He further submitted that after the order passed by the Hon'ble Apex Court quashing and setting aside the order of this Court granting second furlough leave, no incidence thereafter has been reported involving the petitioner. While dealing with the submission of the State with regard to apprehension about threat to witnesses in two criminal pending cases, he submitted that in the criminal case arising out of the FIR registered with Panipath Police Station, Haryana, he is at present on bail. So far as the second criminal case, which relates to corruption act is concerned, the same is pending since year 2015 and till date no grievance is raised with regard to the threat to witnesses being administered by the petitioner.

[9] Mr. Bharda relied upon the rejoinder affidavit filed by the petitioner, the nine instances, referred by the State in its affidavit, have been dealt with by the petitioner. Mr. Bharda submitted that on overall appreciation of the aforesaid instances, all aforesaid circumstances existed prior to his earlier release and the same will have no significance in so far as the present application seeking second furlough leave is concerned. Lastly, he submitted that

apprehension expressed by the authority of absconding is concerned, the same is without any basis as he had surrendered in time whenever being released by this Court on temporary bail or on furlough leave. He, therefore, urged this Court to consider the present petition.

[10] The aforesaid submissions of learned advocate for the petitioner has been vehemently objected by Mr. R.C.Kodekar, learned Additional Public Prosecutor who has been assisted by Ms. M.H.Bhatt, learned Additional Public Prosecutor appearing for the respondent-State.

[11] At the outset, the attention of this Court was invited to the pending writ petition being Special Criminal Application No. 4192 of 2023. It was submitted that the said application was moved by the petitioner, through jail, seeking furlough leave on the same grounds as raised in the present petition. Such a petition was registered on 31.03.2023 and is fixed for hearing on 09.06.2023. It was, therefore, submitted that the said application was moved through jail pending this petition. Mr. Zubin Bharda responding to the aforesaid submissions of the learned Additional Public

Prosecutor had clarified that he has instructions to not to press such an application and the Court may consider the present petition for furlough leave.

[12] Mr. Kodekar, learned Additional Public Prosecutor had further submitted that the impugned order dated 15.02.2023 is a well reasoned order supported by cogent material. Indisputably, the petitioner has been convicted for serious offence, for which, he is sentenced to life imprisonment. Mr. Kodekar, learned Additional Public Prosecutor relied upon and referred to the jail remarks. He has invited the attention of this Court to the jail conduct of the petitioner, which is reported not good by jail authority. Considering the instances reported inside the jail, the petitioner is also imposed jail punishment. He emphasized on the fact that the petitioner was enlarged after his conviction on two occasions but he was released with Police Japta. His last release was on 31.01.2021.

[13] Mr. Kodekar, learned Additional Public Prosecutor has relied upon the decisions of the Hon'ble Apex Court in the case of **State of Maharashtra and Another v. Suresh Pandurang Darvakar**, reported in (2006) 4 Supreme Court Cases 776, **State of**

***Haryana and Others vs. Mohinder Singh***, reported in (2000) 3 Supreme Court Cases 394, ***Asfaq vs. State of Rajasthan and Others***, reported in (2017) 15 Supreme Court Cases 55.

[14] Mr. Kodekar, learned Additional Public Prosecutor heavily replied upon order of the Hon'ble Apex Court, whereby, the order passed by this Court enlarging the petitioner on furlough leave came to be quashed and set aside. He submitted that the Hon'ble Apex Court has in detail examined the relevant rules and has also taken into consideration the circumstances which prevailed before first release of the petitioner. In fact, the Hon'ble Apex Court has concurred with the opinion of the respondent state authorities. Having noticed the circumstances, the Hon'ble Apex Court has categorically observed that the applicant and his father have mass followers and there is reasonable apprehension of deception of public peace and tranquility. The Hon'ble Apex Court has also taken note of the fact of attempts being made to bribe public officials. The Court has also taken note of conduct of the petitioner inside the jail. He further submitted that one of the grounds raised by the petitioner to attend the mother's health is concerned, the petitioner had moved an application seeking temporary bail in the

pending appeal before the Division Bench of this Court. Mr. Kodekar, learned Additional Public Prosecutor invited the attention of this Court to the observations made by the division bench in its order dated 21.03.2022 passed in such application. Mr. Kodkear had emphasized on the fact that this Court upon appreciation of the verification report, which was placed on record by the State, had found the present petitioner guilty of abuse of process of Court proceedings. In fact, it has emerged on record that the medical documents, which were placed on record based, on which, the temporary bail was sought for by the petitioner, were found to be concocted. In such circumstances, the Hon'ble Division Bench was constrained to direct the Registrar (Judicial) to depute the officer not below the rank of Deputy Registrar to lodge the complaint in this regard. He further submitted that the cost of Rs.1,00,000/- was imposed upon the petitioner, which was directed to be deposited with the Registry of this Court. While referring to the impugned order passed by respondent authority, Mr. Kodekar, learned Additional Public Prosecutor had drawn attention of this Court to the seven circumstances relied upon by the authorities, in the form of opinion, submitted to the sanctioning authority, while deciding the furlough leave of the petitioner.

[15] Mr. Kodekar, learned Additional Public Prosecutor had made an attempt to highlight the conduct of the petitioner during the course of trial. He submitted that several attempts were made by the SADHAKS at the instance of the petitioner to pressurize the prosecutrix, the family members of the prosecutrix. Mr. Kodekar has further submitted that two other witnesses of the said trial were also assaulted during trial. In fact one of the witnesses named Dinesh is reported to be missing and he could not be examined as witness in the trial. He submitted that in fact one of the witnesses namely Dr. Prajapati was murdered. He further submitted that an IPC offence under Section 307 has been registered. With regard to the two criminal pending cases is concerned, Mr. Kodekar submitted that the SADHAKS at the instance of the petitioner has threaten the Income Tax Officer for which the FIR has been registered with Umra Police Station at Surat for the offence punishable under Section 507, 506(2) being I-C.R.No. 188 of 2015. So far as the criminal cases arising out of offence registered with Panipath Police station is concerned, one witness named Mahendra Chavla has been brutally assaulted by SADHAKS at the instance of the petitioner, wherein, the petitioner has been

chargesheeted and the criminal case is pending for adjudication.

[16] Lastly, Mr. Kodekar, has relied upon the opinion of the respondent authority wherein it has been reported that the petitioner has proposed one Gajanand Bhimashankar Vaghmare as his surety, however, the said surety is not his relative and is in fact engaged in doing pooja and is originally belonging Solapur Maharashtra and has no immovable property. Mr. Kodekar, at this stage, had invited the attention of this Court to the Rule 6 of The Prisons (Bombay Furlough And Parole), Rules 1959 and has submitted that the prisoner cannot be granted furlough unless he has a relative, who is willing to receive him on furlough and is ready to enter surety bond in this regard as provided under the rules. He submitted that the mother and the sister of the petitioner are residing in Ahmedabad. The obligation is put on the petitioner to furnish details of the surety of the relative. In absence of such detail being furnished, no fault can be found with the respondent authorities in not extending the furlough leave.

[17] Mr. Kodekar, therefore, submitted that the order impugned is a reasoned order supported by the cogent material in the form of

opinion submitted by the competent authority and the order is not passed in any mechanical manner or without application of mind, which calls for any interference by this Court in the supervisory writ jurisdiction.

[18] Responding to the aforesaid submission of Mr. Kodekar, Mr. Bharda, had tried to emphasize on the fact that considering the period of incarceration and in absence of any untoward incident during the interregnum period being reported, the apprehension expressed by the respondent authorities are without any basis. He has offered to be subjected to suitable conditions. Though he has raised ground to visit his ailing father at Jodhpur, Rajasthan, he has offered to not to leave Ahmedabad city.

[19] In the instance case, the petitioner has invoked extraordinary writ jurisdiction under Article 227 read with Articles 14 and 21 of the Constitution of India, 1950. This Court is conscious of the scope of its writ jurisdiction undoubtedly where the rights of prisoner either under the constitution or under law are violated, the writ power of the Court can and should run to his rescue. The Prisons (Bombay Furlough And Parole), Rules 1959, were made

pursuant to the Section 59 of the Prisons Act. In exercise of powers conferred by Clause 5 and 28 of Section 59 of the Prisons Act, 1894 (IX) 1984 in its application to the State of Bombay, the Government of Bombay had made such rules. The aforesaid rules were made applicable to the State of Gujarat. The aims and objects of the said rules relating to parole and furlough, have been extensively discussed by the full bench of this Court in the case of ***Bhikhabhai vs. The State of Gujarat and Ors.***, reported ***AIR 1987 Guj 136***. The Full Bench has referred to and relied to report submitted by All India Jail Manual Committee and has referred to the objects mentioned in the Modern Prison Manual, this objects are as under:

*(i) to enable the inmate to maintain continuity with his family life and deal with family matters.*

*(ii) to save the inmate from the evil effects of continuous prison life.*

*(iii) to enable the inmate to maintain constructive hope and active interest in life.*

[20] However, there is a warrant for this vigil while exercising writ jurisdiction. The Court process casts the convict into the prison system and the deprivation of his freedom is not a blind

penitentiary affliction but a blighted institutionalization geared to a social good. The Court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration. The aforesaid observations have been made by the Hon'ble Supreme Court in the case of ***Sunil Batra Etc vs Delhi Administration And Ors.***, reported in ***AIR 1978 SC 1675***. The Hon'ble Supreme Court has reiterated that in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become a threat to the law and order of the society, should not be released on parole. This Court has advantage of the detailed analysis made by the Hon'ble Supreme Court in the case of the petitioner. The relevant observations of the Hon'ble Supreme Court, while analyzing the aforesaid rules, more particularly, Rule 3 and 4 are quoted as under:

*"17. It is evident that the Bombay Furlough and Parole Rules do not confer a legal right on a prisoner to be released on furlough. The grant of furlough is regulated*

*by Rule 3 and 4.”*

*“24. The principles may be formulated in broad, general terms bearing in mind the caveat that the governing rules for parole and furlough have to be applied in each context. The principles are thus:*

*(i) Furlough and parole envisage a short-term temporary release from custody;*

*(ii) While parole is granted for the prisoner to meet a specific exigency, furlough may be granted after a stipulated number of years have been served without any reason;*

*(iii) The grant of furlough is to break the monotony of imprisonment and to enable the convict to maintain continuity with family life and integration with society;*

*(iv) Although furlough can be claimed without a reason, the prisoner does not have an absolute legal right to claim furlough;*

*(v) The grant of furlough must be balanced against the public interest and can be refused to certain categories of prisoners.”*

[21] Thus, grant of release on furlough is a discretionary remedy circumscribed by the rules 3 and 4. The Hon'ble Supreme Court on noting relevant observations of various decisions has maintained the need of balance to be maintained between two competing interests while granting parole and furlough i.e. reforming the convict on one hand and the public purpose interest of society on

the other hand.

[22] Having noticed the aforesaid provisions, the Court while examining the validity of the order of the respondent authorities invoking Rule 4 (4), Rule 4 (6), Rule 4 (10) of the aforesaid rules, in case of the applicant, has noticed that in absence of any attempt to escape from lawful custody, the authority has committed an error in invoking sub Rule 10 of Rule 4. The Court further examined the validity of the order in light of the seven circumstances, which existed prior to one granting the 1st furlough, while invoking rule 4 ( 4 ) and Rule 4 ( 6 ) by the authority has held as under;

*“25. The furlough application of the respondent was rejected by the DGP by an order dated 8 May 2021. The DGP relied on the concurrent opinion of the ACP, DCP and Jail Superintendent to deny the grant of furlough, based on the following circumstances:*

*(i) The gravity of the offences that the respondent has been convicted of, including, [Sections 376\(2\)\(c\), 377, 354, 504, 506\(2\), 508 of the IPC;](#)*

*(ii) the criminal misconduct of the respondent, during the trial, including attempts to bribe public officials; threatening, assaulting and murdering of witnesses by followers of the respondent; threatening police officials and inspectors of the Income Tax Department;*

*(iii) mass following of the respondent willing to commit offences at the instance of the respondent; and*

*(iv) illegal activities while in custody, such as keeping a mobile phone and attempting to establish contact with outsiders.*

*26. These allegations have been refuted by the respondent on the ground that apart from the present case, he is accused in two other offences in which he has been granted bail. It has been urged that in the offences relating to intimidation and injury to the witnesses mentioned in the order dated 8 May 2021, the police has not charged him and he was not involved in any manner. It has been urged that even otherwise, these offences occurred prior to 2016, after which there have been no complaints against or in relation to the respondent. The respondent has laid emphasis on the fact that when he was granted furlough in December 2020, he did not violate the conditions of furlough, nor was there any disruption of law and order.*

*27. The DGP has invoked Rules 4(4), 4(6) and 4(10) of the Rules to dismiss the furlough leave application. Rule 4(4) of the Rules provides that prisoners whose release is not recommended by the Commissioner of Police on grounds of public peace and tranquility may not be considered eligible for furlough. Rule 4(6) provides for rejection of furlough leave where the conduct of the prisoner is not satisfactory and Rule 4(10) provides that prisoners who have escaped, or attempted to escape from lawful custody or have defaulted in surrendering, may not be eligible for furlough.”*

[23] Thus, the circumstances highlighted by the authority in the form of their opinion has weighed with the Hon'ble Supreme Court, while upholding the order of the authority refusing sanction of furlough to the extent invoking rule 4 ( 4 ) and rule 4 ( 6 ) is

concerned.

[24] In light of the broad principles laid down by the Hon'ble Supreme Court, this Court is of the opinion that there cannot be iota of doubt that the authorities are supposed to address the question as to whether the convict is such a person, who has the tendency to reform himself to become a good citizen or his presence in the society is likely to deter the law and order situation or create public tranquility. In order impugned, the authority has cited four reasons to not to accord sanction for furlough leave. The same are quoted as under:-

*1. The applicant convict is undergoing life sentence for the offences under section 376(2)(c), 377, 354, 504, 506(2) 508, 323 IPC.*

*2. The Jail superintendent has opined in negative. During his stay inside jail, the applicant has been imposed six times Jail punishments. The applicant is found in illegal possession of mobile as well as made an attempt to remain in contact outside jail. He is also reported to have continued illegal activities inside Jail.*

*3. The Deputy Police Commissioner Ahmedabad City has expressed his apprehension with regard to law and order situation in Ahmedabad city to be disturbed considering his strength of influencing his sadhaks/ followers. The officer has also expressed apprehension about applicant fleeing outside India to foreign countries with the aid of his followers.*

*4. The detailed opinion of the Deputy Police Commissioner (crime Branch) Surat city dated 14.06.2022 and the letter dated 11.06.2022 submitted by the Assistant Police Commissioner F division, Surat city is also taken into consideration.”*

[25] Further, the order dated 15.02.2023 passed by the Director General of Police, Jail and reformative administration has rejected the furlough leave application mentioning following reasons:

*(1) The Jail Superintendent had given a negative opinion on the furlough application as the petitioner had engaged in illegal activities inside the jail, including keeping a mobile phone and making contacts outside the jail; there were six punishment imposed upon the petitioner.*

*(ii) The petitioner if released on furlough may violate law and order;*

*(iii) The Ahmedabad police of Police has given negative opinion for his second furlough because the Petitioner have numbers of followers and also likely to cause problem of law and order and any possibility of absconding the country cannot be rule out.*

*(iv) There are other reasons on that basis second furlough cannot be granted to the petitioner and the objections are as follows:*

*(a) During the investigation of the offence, Deputy Commissioner of Police, had guided a team to arrest the petitioner and had disclosed her official cell phone details to the media to solicit information from the public regarding the whereabouts of the respondent. On 16 October 2013 and 18 October 2013, the DCP*

*received phone calls from a person claiming to be a 'sadhak' of the petitioner, threatening to kill the DCP if she continued to search for the petitioner. On investigation, it was revealed that he was a resident of Madhya Pradesh and an FIR was registered against him;*

*(b) The administrator of the ashram in Surat visited the petitioner and the petitioner gave a chit to him in his handwriting for giving a bribe of Rs. 1 crore. The administrator of the ashram and others gave a bribe to the police officers, medical officers and judicial officers to weaken the case against the respondent. An FIR against these persons was registered. In case the respondent is released on furlough, he may continue such offensive acts;*

*In order to break the morale of the complainant, her husband, who was a witness in the trial, was assaulted with a lethal weapon on 28 February 2014. A complaint, ICR No. 50/2014, was registered under Sections 307 and 188 of the IPC against persons connected with the petitioner. While these persons have been arrested, they continue to attract a huge crowd of followers in India and may commit offensive acts in the future. The petitioner may also threaten the husband of the complainant or other witnesses if he is released on furlough;*

*(d) A complaint, ICR No. 31/2014, was registered under Sections 324 and 114 of the IPC and Section 135 of the Gujarat Police Act 1951, against two unknown persons for assaulting and injuring one Rakesh Jayantilal Patel, a witness in the Asaram case, on 10 March 2014 on his head with a weapon;*

*(e) A complaint, ICR No. 69/2014, registered under Sections 307, 326 (A), and 114 of the IPC against two persons who claimed to be sadhaks of Asaram assaulting and injuring one Bhagchandani, a witness in*

*5 the Asaram case, on 16 March 2014 by throwing acid on him and attempting to murder him; for Dinesh was Bhagchandani, a witness is 5 in the Asaram case, on 16 March 2014 by throwing acid on him and attempting to murder him;*

*(E) A complaint, ICR No. 133/2014, was registered under Sections 307 of the IPC, Sections 25 (1) (A) (B) and 27 of the Arms Act 1959, and Section 135 (1) of the Gujarat Police Act 1951, against one unknown person for assaulting and injuring one Amrut Prajapati, a witness in the Asaram case, on 23 May 2014 by firing a revolver with the intention of causing death. The witness suffered severe injury and died during treatment;*

*(g) The offences against the witnesses in Asaram's case and in the petitioner's case were committed by one Pravin Vakil. The offences against these witnesses increased after this accused visited the petitioner in jail on 15 February 2014. Thus, there is a possibility of the involvement of the petitioner in the commission of these offences;*

*(h) An FIR, CR No. 243/2015, was registered under Sections 307, 452, 1208, and 34 of the IPC and Section 25(1)(a) of the Arms Act 1959, for assaulting one Mahendra Chavala, a witness in the case against the petitioner. The petitioner was passively involved in the said incident; and (1) In connection with the investigation of the case against the respondent, 42 bags were seized from the flat of a sadhak. Pursuant to the direction of the High Court, the bags were handed over to the Income Tax Department. A raid was conducted by the Income Tax Department on sadhaks staying across the country and crores of rupees worth of properties had been seized. Most of these investments were on behalf of the petitioner and 6 his father, Asaram. During the investigation, an Inspector was threatened of being murdered and a complaint*

was lodged;

*(v) The present DCP agreed with the above opinion of the ACP. Given the conduct of the petitioner, his criminal network and his followers, the DCP objected to the grant of furlough to him;*

*(vi) The petitioner was granted furlough in December 2020 on account of his ailing mother. The furlough was granted with the permission of the High Court; and*

*(vii) The first furlough leave application of the petitioner was dismissed in 2019. In response to the said application as well, the ACP had given a negative opinion to not grant furlough, which was corroborated by the then DCP. The reasons for rejecting the first furlough leave application are the same as those produced above,*

[26] Based on the above opinion, the sanctioning authority has proceeded to not to accord sanction of furlough leave by highlighting following reasons:

*(1) The petitioner is accused of high profile cases of rape and atrocities punishable under provisions of Sections 376(2) (c), 377, 354, 504, 506(2), 508 of the IPC:*

*(iii) frequent assaults on witnesses have been registered against the followers of the petitioner and seven offences have been registered against him;*

*(iv) one of these seven offences is being supervised by an IPS officer, Shoba Bhutada, who has been threatened by the followers of the petitioner;*

*(v) The petitioner is not a normal prisoner who may be considered for grant of furlough. He has a group of*

*thousands of head strong followers, spanning across the country who are willing to commit offences at the instance of the petitioner:*

*(vi) In case the petitioner is released on furlough, the lives of the witnesses in the original trial will be under threat. The petitioner may interrupt the judicial proceedings for prosecution of the seven offences pending against him; and*

*(vii) The Petitioner is engaged in dangerous activities of organized crime and has a network of persons and a financial background.*

[27] On overall appreciation of record, this Court finds that the registration of the present FIR was on 06.10.2013, the petitioner could be arrested only on 04.12.2023. The registration of the FIR was immediately followed by the incident dated 16.10.2013 whereby SADHAKS at the instance of the petitioner had threatened to kill the Investigating Officer, who was Deputy Commissioner of Police, Surat. On 16.10.2013 and 18.10.2013, the Investigating Officer had received a phone call from a person claiming to be SADHAKS, who at the instance of the petitioner, had threatened to kill her if she continued in search of the petitioner.

[28] The second incident followed with the registration of FIR being I-C.R.No. 50 of 2014, wherein the complainant and her husband

were assaulted with a lethal weapon on 24.02.20214. The said FIR was registered against the accused, who were connected with the petitioner. At one stage, such allegation was that the petitioner had threatened the husband of the complainant and other witnesses, if he was released on furlough leave.

[29] The respondent authority has referred to almost three other incidents where three different FIRs have been registered against the petitioner involving the persons connected with the petitioner. Most of the allegations made relate to physical assault. It has come on record that the witnesses have been threatened during trial. Several aggravating incidents have been noticed by this Court as duly reported by the authority in their report. Such incidents are spread in the span over the year 2014 onward till year 2019. Even inside the jail, he has continuously displayed lack of discipline, in fact one of the incident which is reported in his jail conduct indicates that he had led and instigated the jail inmates to protest inside the jail to fulfill their demand, which, *prima-facie*, goes to show the tendency of the petitioner to get evolve in coercive tactics against the jail authority. Such incidence did not deter the petitioner to continue with such activity. The height of dis-respect

towards the legal process has come on record in the form of the order passed by the Hon'ble Division Bench of this Court. This Court, by order dated 21.03.2022 passed in Criminal Misc. Application No. 1 of 2022 while considering the prayer for temporary bail preferred by the petitioner in pending appeal being Criminal Appeal No. 1756 of 2019, has found petitioner guilty of sheer abuse of process of court proceedings. He had placed a fake medical certificate on the record of this Court. The Court cannot ignore the fact that in spite of passing order of rejection of furlough leave by the Hon'ble Supreme Court, the applicant had displayed such conduct of producing fake medical certificate on record.

[30] Having noticed such contemptuous conduct of the petitioner, no error can be found with the order of the State Authority refusing the furlough.

[31] At this stage, the Court would like to remind the principles laid down by this Court as well as by the Hon'ble Supreme Court in various decisions. The Court has specifically observed that while meting out humane treatment to the convicts, care is taken to ensure that kindness to the convicts does not result in cruelty to

the society. If one who has been found guilty of such an offence is released on furlough, there is no guarantee that he will not indulge in similar activity as soon as he is enlarged. None of the twin objects of punishment of imprisonment would then be served. Neither would he be reformed nor would the society remain immunized from his criminal activity. It would be dangerous to the society to release him on furlough merely out of considerations of penal reform and humane treatment.

[32] For the foregoing reasons, the present petition fails. Rule issued by this Court stands discharged.

VISHAL MISHRA

**(NISHA M. THAKORE,J)**