

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 77 OF 2015

Onkar @ Rajabhau S/o Sudhakar Kale
Age : Major, Occ : Nil (Con. No. 7325),
Original R/o : Shikshak Colony, Neknur,
Tq. Kaij, Dist. Beed.
Presently in Central Prison, Aurangabad.

..PETITIONER

VERSUS

1. The State of Maharashtra
2. D.I.G. Prison, Aurangabad.
3. District Superintendent of Police,
Beed.

..RESPONDENTS

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Advocate for Petitioner : Mr. Sanap R.D.
APP for Respondent/State : Mrs. S.G. Chincholkar

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CORAM : S.S. SHINDE & A.M. BADAR, JJ.

Dated: February 10, 2015

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ORAL JUDGMENT :-

Rule. Rule made returnable forthwith. By consent, heard finally.

2. The petitioner herein is convicted and sentenced for life imprisonment for offence punishable under Section 302 of Indian Penal Code and he at present is undergoing sentence in Central Prison, Harsul, Aurangabad. He was released on parole leave on 07.06.2013. His prayer for

extension of parole leave was entertained twice and in all 90 days parole leave was availed by him. However, he could not report back in time due to severe back pains, as stated by him in the Petition. Since the petitioner did not report back after 90 days parole leave was over, the offence was registered against the petitioner and the petitioner was arrested and was taken back to Jail.

3. The petitioner applied for furlough leave, however, his prayer is refused on the ground that, when he was released on parole leave and availed the parole leave for 90 days, he did not report back to the Jail Authorities within time and in view of sub-rule (10) of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 he is not entitled for furlough leave. Hence this Petition.

4. The learned counsel appearing for the petitioner submits that, the petitioner is acquitted from the offence registered for his overstay and therefore, since he is acquitted, the authorities should not have placed reliance on sub-rule (10) of Rule 4 of the said Rules. It is submitted that, the petitioner has placed on record justifiable reasons for his overstay, in as much as, due to severe back pain, he was required to consult a physician. The medical certificate of Dr. Sachin Deshmukh is placed on record. Therefore, according to the learned counsel appearing for the petitioner, the Petition deserves to be allowed.

5. On the other hand, the learned Additional

Public Prosecutor invited our attention to the affidavit in reply filed on behalf of Respondent Nos. 1 and 2 and submits that, in view of the provisions of sub-rules (4), (6) and (10) of Rule 4 of the said Rules, the petitioner's application for furlough leave has been rightly turned down by the Authorities and therefore, she submits that, this Court may not interfere in the Petition.

6. We have given careful consideration to the submissions advanced by the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor for the State. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto and the reply filed by Respondent Nos. 1 and 2. We are of the opinion that, the application of the petitioner deserves to be considered independently, keeping aside the ground assigned by the authority in the impugned order that, he did not surrender within time, when he was released on parole leave earlier. Upon perusal of the pleadings in the Petition and in particular, the pleading in the light of Exhibit 'A' i.e. the Medical certificate issued by Dr. Sachin Deshmukh, it appears that, the petitioner was suffering from severe back pains. Though he overstayed, to that effect separate offence was registered and as it is evident from the perusal of the reply filed by the respondents and in particular paras 7 and 8, the petitioner is acquitted of the said offence. The learned Additional Public Prosecutor, on instructions of the Authority, who is present in the Court submits that, the Authorities are going to prepare and

forward the proposal for deduction of remissions of the petitioner for his overstay when he was released on parole leave.

7. In the light of the discussion hereinabove, in our opinion, when the separate offence was registered for overstay of the petitioner and also that, the authorities are going to submit the proposal for deduction of his remissions, the respondent Authorities were not justified in invoking the provisions of sub-rule (10) of Rule 4 of the said Rules and reject the application of the petitioner for grant of furlough leave.

8. In that view of the matter, the impugned order dated 01.12.2014 is quashed and set aside.

The Respondent Authorities are directed to consider the prayer of the petitioner for grant of furlough leave afresh without adverting to sub-rule (10) of Rule 4 of the said Rules and without being influenced by the observations in earlier orders passed by the authorities, as expeditiously as possible, however, in any case within two weeks from today.

9. Petition is allowed in the above terms.

10. Rule made absolute accordingly.

Sd/-
(**A.M. BADAR, J.**)
sga/-

Sd/-
(**S.S. SHINDE, J.**)