

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

CRIMINAL WRIT PETITION NO. 207 OF 2015

- 1] Keshav s/o. Tukaram Pawar,
Age: 66 Years, Occu.: Agril.
R/o. At & Post Amdura, Tq. Mudkhed,
Dist.: Nanded [Convict No.7085]
- 2] Shivraj s/o. Keshav Pawar,
Age: 31 Years, Occu.: Agril.
R/o. As above [Convict No.7084],
Presently, both the petitioners
are in Central Jail Harsul,
Aurangabad].

PETITIONERS

VERSUS

- 1] The State of Maharashtra,
Through the Secretary,
Home Department, Mantralaya,
Mumbai-32.
- 2] The Divisional Commissioner,
Aurangabad Division, Aurangabad
- 3] The Superintendent of Jail,
Central Jail, Harsul, Aurangabad

RESPONDENTS

...
Mr. S.B.Jadhav, Advocate for Petitioners
Mrs. S.G.Chincholkar, APP for Respondent – State
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**CORAM : S.S. SHINDE &
A.M.BADAR, JJ.**

**Reserved on : 26.02.2015
Pronounced on: 03.03.2015**

ORDER: [Per S.S.Shinde, J.] :

1] This Petition is filed praying therein for issuance of direction to the respondent Authorities to release the petitioners, either on parole leave and/or temporary bail, for a period of thirty days on the ground of serious illness of wife of petitioner No.2 and the marriage of son of the petitioner No.1 and the brother of petitioner No.2 scheduled on 4.3.2015.

2] We have heard the learned counsel appearing for the petitioners and the learned APP appearing for the respondent State. The learned counsel appearing for the petitioners invited our attention to the pleadings in the Petition, grounds taken therein and submits that, the petitioners may be released on parole leave or may be released on temporary bail, on the grounds stated in the Petition.

3] The learned APP appearing for the respondent State invited our attention to the affidavit filed by one Shailesh Ganpatrao Patwari, working as Naib Tahsildar in the Office of Divisional Commissioner (General Branch),

Aurangabad, and annexures thereto and submits that, the application of the petitioner No.1 Keshav Tukaram Pawar for parole is premature. He can apply only after 15th March, 2015. According to the learned APP, when petitioner No.1 Keshav Tukaram Pawar was released earlier on parole, he surrendered late by 329 days and on another occasion after 170 days, and therefore, office of respondent No.1 has refused the parole leave by an order dated 23.2.2015. So far petitioner No.2 Shivraj Keshav Pawar is concerned, his application dated 30.12.2014 was rejected since the Police report was adverse to him. It is further submitted that Petitioner No.2 Shivraj Keshav Pawar was required to be arrested since he did not surrender even after 840 days over and above parole leave granted to him. His application was rejected on 5th February, 2015.

4] We have heard learned counsel appearing for the petitioners. We have considered grounds taken in the petition, affidavit filed by the respondent State and also Judgment cited by the learned counsel appearing for the petitioner in the case of ***Harikeshao Shriram Gadhwe Vs. State of Maharashtra & others***¹ and also copy of

1. 2004 ALL MR [Cri.] 746

the Notification dated 23.02.2012 issued by the Government of Maharashtra, Department of Home, wherein it is provided that, the convict is not entitled to apply for parole within one year from the date of expiry of parole leave, granted earlier. Admittedly, in case of both the petitioners one year period is yet to be completed. Therefore, their application is premature. There is an exception for applying for parole within one year in case of death of nearest relatives. However, present case is not covered under said exception. Therefore, keeping in view the relevant Notification, it will have to be held that, the applications filed by the petitioners are premature. *Secondly*, the conduct of the petitioners, who did not surrender on their own even after expiry of parole leave granted to them on earlier occasion, is also required to be considered. As already observed, the petitioner No.2 Shivraj Keshav Pawar on his own did not surrender in spite of overstaying by 840 days, when he was earlier released on parole on earlier occasion. Petitioner No.1 Keshav Tukaram Pawar, when he was released on two occasions earlier, he surrendered late by 329 days and on second occasion after 170 days respectively.

5] Therefore, taking overall view of the matter, we are of the opinion that, the prayer of the petitioners deserves no consideration, hence Petition stands rejected.

6] We make it clear that, as and when petitioners will be entitled to apply for parole-furlough, and if they apply in future, it will be open for the authorities to decide the application in accordance with law.

Sd/-

[A.M.BADAR, J.]

Sd/-

[S.S. SHINDE, J.]

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