

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

CRIMINAL WRIT PETITION NO.318 OF 2015

Bhagwan s/o Malahari Borade ... PETITIONER

VERSUS

The State of Maharashtra
and others ... RESPONDENTS

.....
Shri B.N. Magar, Advocate for petitioner (appointed)
Shri K.S. Patil, A.P.P. for respondents/ State
.....

CORAM: S.S. SHINDE AND
 A.I.S. CHEEMA, JJ.

DATED: 10th June, 2015.

ORAL ORDER :

1. Heard. This petition is filed praying therein for release of the petitioner on furlough leave. In pursuance of the notice issued to the respondents, one Shri J.S. Naik, Superintendent, Nashik Road Central Prison, Nashik has filed the affidavit-in-reply. Paragraph No.5 of the said affidavit reads thus :

“5. I say that the Deputy Inspector General of Prison, Central Region, Aurangabad by order dated 12/11/2014 had rejected the furlough leave application of the petitioner for the breach of conditions of furlough leave under the Prisons (Mumbai Furlough and Parole) Rules, 1959, Sub-rule 4(4), 4(6), 4(10) of Rule 4 and under Rule 6 on the ground that earlier when the petitioner was released on death Parole leave on 25/11/2005 he remained absconded for 2399 days and was subsequently arrested by the police and handed over to the prison authorities on 28/6/2012. The copy of the said order dated 12/11/2014 is marked as Exhibit-B.”

2. The learned counsel appearing for the petitioner submits that even though the petitioner did not report within time to the jail authorities and he was required to be arrested, in view of the judgment of the Division Bench of this Court at Nagpur Bench in the case of Anil Laxman Jawade Vs. The State of Maharashtra & anr., reported in 2007(2) Bom.C.R. (Cri. 224, the ground taken in paragraph No.5 of the affidavit-in-reply to deny the release of petitioner on furlough would not survive.

3. Upon perusal of the facts in the case of Anil Laxmanrao Jawade (supra), we find that, in the facts of that case, the petitioner therein surrendered late on his own before the jail authorities. However, in the present case, as stated by

the respondents in paragraph No.5 of the affidavit-in-reply, the petitioner did not surrender on his own and, therefore, he was arrested. The petitioner did not surrender for 2399 days.

4. In the light of averments in the affidavit-in-reply filed by the respondents, and in particular paragraph No.5 thereof, this is not a fit case in which the petitioner deserves to be released on furlough. In the circumstances, writ petition stands rejected.

(A.I.S. CHEEMA, J.)

(S.S. SHINDE, J.)

fmp/cwp318.15