

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.643 OF 2015

Mahesh s/o Tarachand Suryawanshi,
Age-Major, occu:Nil (Con. No.C-7343),
Original R/o-Khutphal, Dist-Khandwa,
Presently in Central Prison, Aurangabad.

...PETITIONER

VERSUS

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

...RESPONDENTS

...
Mr.D.Y. Nandedkar Advocate appointed (Absent)
for Petitioner.
Mr.M.M. Nerlikar, A.P.P. for Respondents.
...

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

DATE : 25TH JUNE, 2015

ORAL ORDER :

1. Rule, made returnable forthwith and heard

finally with consent of the parties.

2. This Petition takes exception to the order dated 20th March 2015 passed by the Deputy I.G. Prison, Aurangabad (Central) refusing the request of the Petitioner for furlough leave.

3. It appears that the Petitioner was convicted for the offence punishable under Section 376 of I.P.C. and was ordered to undergo 7 years imprisonment. In pursuant to said order of conviction, the Petitioner is undergoing sentence in Central Prison, Aurangabad from the year 2012. On earlier occasion the Petitioner did apply for Parole leave and his prayer for grant of Parole leave was favourably considered and he was released for 30 days on 24th July, 2014, by the order issued by the Divisional Commissioner, Aurangabad. The Petitioner did apply for extension of parole leave on two occasions and the authority favourably considered his request and extended the

period of parole leave by 60 days. However, according to the Respondents, the Petitioner did not surrender on due date i.e. 23rd September 2014 but surrendered on 24th September 2014.

4. The Petitioner applied for furlough leave on 15th June 2014 and requested for releasing him on furlough leave. However his prayer for releasing on furlough leave was rejected on the ground that there are four other brothers who can look after his mother. Respondents have given one of the ground in the reply for not favourably considering his prayer in the Petition that he surrendered late by one day when he was granted parole leave.

5. We have considered the pleadings in the Petition, annexures thereof and the averments in the reply filed by the Respondents. It is not in dispute that in view of the sub-rule(2) of Rule (3) of the Prisons (Bombay Furlough And Parole)

Rules, 1959, the Petitioner is eligible to be considered for releasing on furlough leave. Sub-rule (2) of Rule 3 of the said Rules, reads thus:

"3. When Prisoner may be granted furlough.-

(1).....

(2) A Prisoner, who is sentenced to imprisonment for a period exceeding five years may be released on furlough for a period of two weeks at a time for every two years of actual imprisonment undergone:

Provided that a prisoner sentenced to imprisonment for more than five years but not to imprisonment for life may be released on furlough every year instead of every two years during the last five years of his unexpired period of sentence.

Provided further that a prisoner sentenced to life imprisonment may be released on furlough every year instead

of every two years after he completes seven years actual imprisonment."

6. As already observed, the Petitioner is in jail for more than two years and entitled for release on furlough leave by invoking afore mentioned sub-rule (2) of Rule 3 of the said Rules. Therefore, merely because there are other four brothers to look after his ailing mother, it cannot be valid ground so as to deprive the Petitioner from enjoying furlough leave as provided under relevant Rules. So far as delay of one day in surrendering by the Petitioner when he was released on parole leave is concerned, it is not in dispute that the Government has prescribed the procedure so as to deduct the remission from accumulated remission for delay in reporting late.

7. In that view of the matter, we are of the opinion that the Petitioner is entitled to be released on furlough leave in view of the

provisions of Sub rule (2) or Rule 3 of the said Rules. Therefore, we direct the Respondent authorities to consider the prayer of the Petitioner for furlough leave if he is otherwise eligible, but not to raise the ground that there are other four brothers to look after his mother. The Respondent authorities to re-consider the earlier decision and take the fresh decision in the light of the observations made herein before, as expeditiously as possible, however within FOUR WEEKS from today.

8. Rule made absolute on above terms. Writ Petition stands disposed of, accordingly.

[A.I.S.CHEEMA, J.]

asb/JUN15

[S.S. SHINDE, J.]