

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL WRIT PETITION NO. 764 OF 2015**

KAMAJI RAJARAM KAMBLE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Petitioner : Mr. V. R. Jain (appointed)
APP for Respondent/State : Mr. M.M. Nerlikar

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CORAM : S.S. SHINDE & A. I. S. CHEEMA, JJ.
Dated: July 08, 2015

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PER COURT :-

The learned counsel appearing for the petitioner makes oral prayer to correct the designation of Respondent No.4. Prayer granted. Amendment to be carried out forthwith.

2. Rule. Rule made returnable forthwith and heard finally by consent of the learned counsel appearing for the parties.

3. This Petition filed under Article 226 of the Constitution of India takes exception to the order dated 27th April, 2015 passed by Respondent No.4 thereby refusing to release the petitioner on furlough leave.

4. It is the case of the petitioner that, the petitioner is undergoing sentence of life imprisonment at Open Prison Paithan. He was convicted for the offence punishable under Section 302 of I.P. Code by Sessions

Court, Nanded. Earlier he was released on parole. He did surrender late by 56 days. However, as per the relevant Rules, the authorities inflicted punishment by deducting 5 days remissions for surrendering late by one day. The total 280 days remission was deducted. It is further case of the petitioner that, on 27th December, 2014, he filed an application seeking furlough leave with Respondent No.4. On 14th February, 2015, Respondent No.4 asked Respondent No.3 whether the petitioner can spend his period of furlough leave, in case granted, within the jurisdiction of Respondent No.3. Respondent No.3 reacted to said communication positively. It is further case of the petitioner that, his wife Satwashila is ready to file surety bond, if he is released on furlough. However, vide impugned order dated 27th April, 2015 his application for furlough leave has been rejected on the ground that, on earlier occasion when he was released on parole leave, he surrendered late by 56 days. Hence this Petition.

5. The learned counsel (appointed) appearing for the petitioner submits that, already the petitioner is punished for surrendering late, in as much as, he surrendered late by 56 days and his 280 days remission is reduced from the available remission period. It is submitted that, once the petitioner is given punishment for surrendering late and 280 days remission is deducted, in view of the exposition of the Division Bench of Bombay High Court, bench at Aurangabad in the case of Shri Suresh Jagan Patil V/s The State of Maharashtra in Criminal Writ

Petition No. 914 of 2008 decided on 15th January, 2009, the application of the petitioner on the ground of surrendering late by 56 days on earlier occasion could not have been pressed into service and the petitioner's application should not have been rejected on the said ground.

6. The learned Additional Public Prosecutor appearing for the petitioner has tendered across bar the affidavit in reply on behalf of Respondents. In para 3 of the said affidavit in reply, it is stated that, after considering the report and prisoner's past conduct of over staying on leave, Respondent No.2 has rightly rejected the application of the petitioner for furlough leave by the impugned order. It is further stated in para 6 that, as per Rule 4(10) of the Prison (Furlough and Parole) Rules, 1959, the prisoner who has defaulted in surrendering himself at appropriate time after release on parole and furlough shall not be considered for release on furlough. The relevant rule has been quoted in said paragraph.

7. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the Respondent/State. With their able assistance, we have perused the pleadings in the Petition, annexures thereto and reply filed by the Respondents.

8. Similar controversy was raised in case of Suresh

Patil (supra). The Division Bench of this Court by placing reliance upon the judgment of the Bench Presided over by the learned Single Judge of Bombay High Court at Nagpur Bench in the case of Santosh V/s Superintendent, Central Prison, Amravati, 2004 All MR (Cri) 1942 held that, once the remissions are deducted on account of surrendering late by prisoner, on the said ground on subsequent occasion prayer of the convict for releasing him on furlough leave cannot be rejected. It would be worthwhile to reproduce hereinbelow the paras 4 and 5 of the judgment of the Division Bench in the case of Suresh Patil (supra), which read thus :-

“4. Advocate Shri Jain for the petitioner, has relied upon observation of the learned Single Judge at Nagpur Bench in the matter of Santosh Vs. Superintendent, Central Prison, Amravati, 2004 All MR (Cri.) 1942, wherein it has been observed that surrendering late to the prison on earlier occasion cannot be a ground for rejecting application for grant of furlough leave. However, the observations are conditional. In the reported matter, the applicant had surrendered late on three occasions, but punishment was imposed upon the applicant therein, by deducting his remission with a ratio of 1:5 i.e. five days remissions were withdrawn for belated reporting of each day. We are unaware whether such a punishment has been imposed upon petitioner herein. But, Advocate Shri Jain points out that in the petition, the petitioner has

contended that he has been penalised, by withdrawal of 224 days remission for this belated surrendering. It appears that for 112 days belated surrender, he is penalised by withdrawing remission of 224 days i.e. 1 : 2.

5. We, therefore, dispose of writ petition, by following directions :

(i) The prison authorities to ascertain whether the petitioner is so penalised by withdrawal of 224 days remission for belated reporting upon release on parole and furlough respectively in February, 2007 and January 2008.

(ii) In case, penalty is so imposed, by withdrawal of remission of 224 days, the order dated 6/8th September 2008 refusing furlough leave, shall stand quashed and the prison authorities shall release petitioner on furlough leave for 14 days, on his furnishing P.R. bond and one surety of Rs. 10,000/- each, to the satisfaction of the prison authorities and before the prison authorities.

(iii) In case no such penalty is imposed, the writ petition shall be deemed to have been dismissed, but without taking away liberty of the petitioner to apply for furlough leave, afresh."

9. Apart from the judgment on which the petitioner has placed reliance, keeping in view the conduct of the petitioner, who is transferred in Open Prison at Paithan, is also an additional factor which deserves consideration. In that view of the matter and in the peculiar facts and circumstances of this case, the impugned order refusing the furlough leave on the ground that, when the petitioner was released on earlier occasion on parole leave, he surrendered late deserves to be quashed and set aside. Accordingly the same is quashed and set aside.

10. Respondent No.4 is directed to reconsider the prayer of the petitioner for releasing him on furlough leave, and not to reject the said prayer on the ground that, the petitioner has earlier surrendered late when he was released on parole, however, subject to fulfillment of other conditions, if any, within three weeks from receiving the copy of this order.

11. Rule made absolute on the above terms. Petition is disposed of accordingly.

12. The parties to act upon an authenticated copy of this order.

13. The High Court Legal Services Sub-Committee, Aurangabad to pay the fees of the appointed Advocate Mr. V.R. Jain as per its Fees Schedule.

(**A. I. S. CHEEMA, J.**)
SGA/-

(**S.S. SHINDE, J.**)