

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

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL WRIT PETITION NO.905 OF 2015.

Abdul Naser s/o Bashir Quazi.

Convict No.C-4728.

District Open Prison, Paithan,

Taluka – Paithan,

District – Ahmednagar.

.. **PETITIONER.**

VERSUS

(1) The State of Maharashtra.

Through its Secretary,

Home Department, Mantralaya

Mumbai – 32.

(2) Deputy Inspector General of Prison.

Central Prison, Aurangabad.

(3) The Superintendent Of Open Prison.

District Open Prison, Paithan.

Taluka – Paithan,

District – Ahmednagar.

(4) The Superintendent of Police.

Office of Superintendent of Police.

Latur, Taluka & District Latur. ..

RESPONDENTS.

Mr. P.V. Suryawanshi, Advocate [Appointed] for Petitioner.

Mr. A.S. Shinde, Additional Public Prosecutor for the State of Maharashtra.

**CORAM : A.B.CHAUDHARI &
INDIRA K. JAIN, JJ.**

DATE : 07/09/2015.

JUDGMENT :- (Per Indira K. Jain, J.)

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned counsel for the parties.

[2] The subject matter of present Petition is challenge to the order dated 27th April, 2015 passed by Respondent No.2 - Deputy Inspector General of Prison, Central Prison, Aurangabad, rejecting the furlough leave application of the petitioner, and quashing and setting aside the same.

[3] Respondent No.2 has rejected the application mainly on the ground that on earlier occasions, petitioner had not surrendered on the scheduled dates and surrendered late by 1 day, 61 days, 1 day and 49 days.

[4] Pursuant to the notice issued by this Court, Respondent Nos. 2 and 3 filed affidavit and additional affidavit in reply. It is stated that police report is against the petitioner. The report discloses that there is danger to the complainant and the witnesses from the prisoner. Statements of witnesses have been recorded. They are neighbourers of petitioner. Another contention of Respondents is that in case petitioner is granted furlough there is no possibility of his suo motu surrender to the Prison.

[5] We have heard the learned counsel for the parties and examined the record. It is the fact that when petitioner was released six times on earlier occasions, he surrendered late on four occasions. It is however not in dispute that after overstay petitioner surrendered himself and he was not required to be arrested by Police.

[6] In our view in the facts of the case petitioner is entitled for grant of furlough as prayed by him. Respondents have not brought anything on record to show that petitioner indulged in any objectionable activities or misbehaved or threatened complainant and witnesses when he was released earlier on parole / furlough.

[7] In this view of the matter, impugned order dated 27th April, 2015 is set aside. Petitioner is directed to be released on furlough in accordance with the law. Rule is made absolute in the aforesaid terms. No order as to costs.

[8] Fees of the learned counsel appointed is quantified at Rs.1500/- (Rs. One Thousand Five Hundred.)

[INDIRA K. JAIN, J.]

[A. B. CHAUDHARI, J.]