

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.311 OF 2015

(Devanand Jagdeorao Raut vs. The D.I.G. Prison (E)(R), Nagpur and another)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders Court's or Judge's orders
or directions and Registrar's orders.

Ms. R. Mishra, Advocate (appointed) for petitioner.
Ms. N. Tripathi, Additional Public Prosecutor for
respondents.

CORAM : B.P. DHARMADHIKARI AND
 P.N. DESHMUKH, JJ.

DATED : JUNE 10, 2015

Heard Ms. Mishra, learned Counsel
appointed for petitioner and Ms. Tripathi, learned
Additional Public Prosecutor for respondents.

By the impugned order dated 7/2/2015
passed by respondent no.1, furlough has been denied
to petitioner on the ground that he had reported late
on earlier occasions and was required to be arrested
once.

Ms. Mishra, learned Counsel for

petitioner, submits that petitioner being the only male member in the family and only earning member, was not in a position to report back on due date. However, he was arrested only once in 2012 and even after that arrest, he had been released on furlough in 2014.

Ms. Tripathi, learned Additional Public Prosecutor for respondents, submits that instances pointed out in reply affidavit show the tendency and habit of petitioner to abscond and as such, he cannot be released on furlough. She is relying upon provisions of Rule 4(10) of The Prisons (Bombay Furlough and Parole) Rules, 1959.

Validity of the aforesaid provision was questioned before this Court and in the judgment in **Raju @ Rajabhau Bhagwantrao Wankhede vs. The D.I.G. Prisons (E)(R) and another** (2015 ALL MR (Cri) 1834), this Court has upheld the same. This Court has then found that mere late surrender by itself cannot be used to the prejudice of prisoner and grounds thereof need evaluation. The impugned order does not show any such application of mind.

The impugned order dated 7/2/2015 passed by respondent no.1 is, therefore, quashed and set aside. The matter is remitted back to respondent no.1 for passing fresh orders. The respondent no.1 shall pass fresh orders in accordance with law within six weeks from today. The criminal writ petition is disposed of accordingly.

The charges for Counsel appointed for the petitioner are fixed at rupees fifteen hundred.

JUDGE

JUDGE

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