

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

CRIMINAL WRIT PETITION NO.359 OF 2015

(Ganesh Radhesham Sharma vs. The D.I.G. Prison (E)(R) 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. Sonali Saware, Advocate (appointed) for
petitioner.

Shri T.A. Mirza, Additional Public Prosecutor for
respondents.

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

DATED : JUNE 22, 2015

Heard Ms. Saware, learned Counsel for
petitioner, and Shri Mirza, learned Additional Public
Prosecutor for respondents. Perused the impugned
order dated 19/3/2015 and also reply filed by
respondent no.1.

The impugned order mentions late
surrender by petitioner by 313 days in September
2006, by 2 days in February 2009, by 5 days in

October 2009, by 1 day in April 2011, by 9 days in December 2011, by 14 days in March 2012 and by 349 days in September 2013 as the reason for denying furlough to petitioner. However, after all these late surrenders, petitioner was again released on 5/6/2014 and he reported back late by 40 days. Though his prayer for furlough made on 18/12/2014 has been rejected by the impugned order, Police report dated 3/3/2015 is in his favour.

The impugned order also mentions registration of offence under Section 224 of Indian Penal Code against the petitioner. However, in reply, no such offence is pointed out. The learned Additional Public Prosecutor submits that in Police report dated 3/3/2015, registration of that offence finds mention. However, the said part of Police recommendation dated 3/3/2015 is not very legible.

This Court in **Raju @ Rajabhau Bhagwantrao Wankhede vs. The D.I.G. Prisons(E)(R) and another** (2015 (1) BCR 64) has already held that mere late surrender by itself is not sufficient to invoke Rule 4(10) of Prisons (Bombay

Furlough and Parole) Rules, 1959.

In this situation, we find that the impugned order is suffering from non-application of mind as reasons in which petitioner did not report within time do not find any evaluation. It is accordingly quashed and set aside. The competent Authority is directed to pass fresh orders within six weeks from today.

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

JUDGE

JUDGE

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