

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

CRIMINAL WRIT PETITION NO. 433 OF 2015.

Rajesh Dhannu Kosekar. ..vs.. The D.I.G.Prison (E)(R),Nagpur and anr.

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

Court's or Judge's orders

Ms.S.S.Dhote Adv. (appointed) for the petitioner.
Ms.N.Mehta, APP for the respondents.

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

DATED : JULY 17, 2015.

Heard learned counsel for the petitioner and learned APP
for the respondents.

Perused the impugned order dated 23rd of March, 2015 and
the reply filed by respondent no.3.

Facts show that petitioner has been released on about nine
occasions since 2006 either on furlough or parole leave. On none of the
occasions he has reported on due date.

Period of delay in surrendering to Jail varies from 1 day to
169 days. He was required to be arrested and brought back to Prison
on three occasions. It appears that for last arrest on 18th of April, 2014
an offence under Section 224 of the Indian Penal Code is also registered
against him.

Impugned order also mentions that his surety (mother) is
not in position to keep control on him and if he is released on leave
there is likelihood of breach of peace.

According to learned counsel, reasons are unsustainable.
She is relying upon judgment dated 3rd of December, 2013 in Criminal
Writ Petition No.511 of 2013.

Learned APP apart from impugned order got support from

affidavit-in-reply. She points out that on nine occasions petitioner has not obeyed the terms and conditions of his release and hence denial of furlough is legally justified.

Office under Section 224 of the I.P.C. is not on account of some act in which petitioner has indulged into while on leave.

Provisions of Rule 4(4)(10) of Prisons (Bombay) Furlough and Parole Rules, 1959 are considered by this Court in the judgment reported at 2015(1) BCR (cri) 64 (Raju @ Rajabhau Bhagwantrao Wankhede and ors. ..vs.. DIG Prisons (E)(R) and anr). This court has held that mere late surrender by itself cannot have the effect of denial of furlough. It has been held that reasons for late surrender must find the evaluation in impugned order.

Here impugned order does not contain any such evaluation. The mother of the petitioner has offered to stand as surety and it is not very clear whether on earlier occasion she herself was surety.

In this situation, as we find impugned order suffers from vice of non-application of mind, the same is set aside.

Respondents are directed to pass fresh order in accordance with law, within four weeks.

It is open for the respondents to demand proper surety and other bonds from the petitioner.

Accordingly Criminal Writ Petition No.433 of 2015 is partly allowed and disposed of.

Counsel (appointed) charges are settled at Rs.1500/-.

JUDGE

JUDGE

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