

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

CRIMINAL WRIT PETITION NO.296/2016

**YASIN TOLAN BAGWAN (C-7569)
V/S
THE STATE OF MAHARASHTRA**

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**Adv.Shri Amit A.Mukhedkar for petr.
APP Mr.P.N.Kutti for State.**

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**CORAM : A.V.NIRGUDE &
V.L.ACHLIYA,JJ.**

DATED : 7TH JUNE,2016

PER COURT :-

This petition challenges order dated 21/1/2016 denying Furlough leave to the petitioner. The petitioner is a convict undergoing imprisonment for 5 years. Earlier in April, 2015, he was released on Parole but he committed default. He surrendered back to the prison after 30 days on his own. The petitioner also reported to the prison authorities and he overstayed during parole because he was hospitalised due to ill health. On 17/11/2015 he made another application seeking Furlough leave but the same was rejected by the impugned order on the ground that the petitioner committed default in surrendering back from Parole leave. Rule 4 of The Prisons (Bombay Furlough and Parole) Rules, 1959 gives various grounds as to when furlough leave should be rejected. Ground No.10 of Rule

4 of the said Rules reads as under :

“4] When prisoners shall not be granted furlough.-

The following categories of prisoners shall not be considered for release on furlough :-

1]

2]

10] Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough. “

2] Learned APP placed reliance on this Ground and justified the impugned order. On perusal of the impugned order, we do not find any discussion on the petitioner's case that he committed default due to unavoidable reasons which were beyond his control, he was hospitalized etc. The learned Officer even did not consider the circumstance that the petitioner surrendered himself after committing default and was not arrested etc. The Rule quoted above is required to be used appreciating the facts and circumstances of each case. This Rule is required to be used as per the exigencies of the situation. If this Rule is mechanically applied to cases like present one, the prisoners would be debarred from taking advantage of Furlough leave. This could not have been the intention of the Legislation. Besides, the Furlough is a kind of right given to a

prisoner. Such right cannot be interfered lightly and applying the Rule mechanically. In the circumstances of this case, we set aside the impugned order and direct release of the petitioner on Furlough leave on the terms and conditions that shall be imposed by the prison authorities.

3] The learned counsel for the petitioner who is appointed by this Court shall be entitled to fees as per Rules. Office shall comply with the directions.

(V.L.ACHLIYA,J.)

(A.V.NIRGUDE,J.)

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