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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.393/2016

Mohammad Sharif Shamim Khan,
age 31 yrs., occu.at present in jail
r/o presently in Nashik Road
Central Jail, Nashik.

...Petitioner..

Versus

1] The State of Maharashtra,
through Secretary,
Ministry of Home Department,
Mantralaya, Mumbai-32.

2] Additional Chief Director and
Jail Superintendent, Maharashtra
State, Pune-1, having office at
2nd Floor, Old Central Building,
Pune.

3] The Inspector General (Prison),
Central Division,
Aurangabad (Maharashtra).

...Respondents...

.....

Shri A.K. Gawali, Advocate for petitioner.

Shri S.P. Deshmukh, APP for respondent nos.1 to 3.

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**CORAM: R.M. BORDE &
K.L. WADANE, JJ.**

DATE: 02.05.2016

ORAL JUDGMENT (Per Borde, J.) :

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1] Heard learned counsel for the parties. Rule. Rule made returnable forthwith and with the consent of learned counsel for the parties, the petition is taken up for final disposal at the stage of admission.

2] The petitioner is objecting to the order passed by the jail authorities refusing him furlough leave requested by him, which order has been confirmed by the DIG Prison, Maharashtra State, Pune, on 25.1.2016.

3] The petitioner is a life convict and is undergoing sentence of imprisonment at Nashik jail. The petitioner was arrested on 19.4.2016 and is in prison since the date of his arrest. He has completed almost 10 years of actual period of imprisonment. The petitioner has been refused the facility of furlough leave on the ground that on 24.3.2012, h was released on parole for a period of 30 days, however, he reported late by 254 days. The petitioner was required to be brought back to jail with the aid of Police authorities. The petitioner has been penalized by directing deduction of 254 days from the remissions admissible to him. After the petitioner was brought to the prison, his request for release on furlough was considered favourably by the jail

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authorities on 26.11.2014 and after completion of the period of furlough leave, he reported on his own accord within the prescribed period at jail on 25.12.2014.

4] Since even after the alleged over-stay of the petitioner in the year 2012, he was released on furlough and has reported back within the prescribed period, clears the apprehension expressed by the prison authorities as regards abscondance of the petitioner after completion of the furlough leave. It must be taken note of that the petitioner was granted furlough leave on three occasions during his tenure of imprisonment and he has reported within the prescribed period on all the three occasions. Since the apprehension expressed by the jail authorities is found to be unsubstantiated, we do not find any reason to reject the request made by the petitioner for grant of furlough leave. It shall be borne in mind that to be released on furlough is the right of the convict and that there are no adverse circumstances for denying the just request made by the petitioner.

5] The writ petition, therefore, deserves to be allowed and the same is accordingly allowed. The orders

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impugned in the petition, passed by the Superintendent of Jail and the Additional Director General of Prisons, Pune, are quashed and set aside. The petitioner shall be released on furlough leave in accordance with the relevant rules by imposing appropriate permissible conditions. The writ petition is allowed to the extent specified above. Rule is made absolute accordingly.

(K.L. WADANE, J.)

(R.M. BORDE, J.)