

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

CRIMINAL WRIT PETITION NO.749 OF 2016

Bharat @ Badri S/o. Vasant Bahirat .. Applicant

Versus

The State of Maharashtra .. Respondent
and others

Mrs.Rizwana Ansvari, Advocate for the petitioner
Mr. M.M.Nerlikar, APP for the respondent/ State

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

DATED : 26.07.2016

P.C. :-

1. The petitioner is in jail and has rather belatedly challenged the order dated 30.03.2011 passed by the Superintendent of Yeroda Central Jail, Pune.

2. The facts leading to this litigation are as under:-

3. The petitioner is a convict. He is in Pune Jail. On 11.05.2010 his furlough leave was granted w.e.f.29.05.2010 for fourteen days. Within fourteen days he did not come back. But he surrendered about fourteen days belatedly on 27.06.2010. In view of this as per Prison rules a notice was given to him as to why he should not be punished for violating the Prisons Rules.

4. The petitioner submitted a reply in which he stated that on the day he was supposed to return for prison, he learnt that his son was suffering from Pneumonia. There was no other male family member to attend his son and therefore he could not surrender within time. Such explanation was not accepted by the Superintendent and the petitioner was penalized by reducing 28 days from his remission and by forfeiting the sum of Rs.1,000/- which he had deposited as surety. This order was passed on 30.03.2011 and same was approved by Sessions Court, Pune on 28.04.2012.

5. As said above rather belatedly after four years this petition is filed. Initially we felt that due to delay, the petition should not be considered. But the learned counsel for the petitioner persuaded us to take a lenient view. Learned counsel for the petitioner rightly pointed out that the petitioner is in jail and has no legal assistance available. Some how he has made this representations to the Court. We are, inclined to entertain this petition on merits.

6. Rule 13 of the Prisons (Bombay Furlough and Parole) Rules, 1959 provides how extension of period of furlough leave is considered. The prisoner who is released on furlough leave before expiry of furlough

period can apply for extension. Even otherwise the authority is empowered to consider a suitable case for extension. From the facts of the case since the intervening time was short and other exigencies possibly prevented him from making an application. The petitioner explained as to why he got delay in return to prison. He was attending his son who was suffering from Pneumonia which is a serious ailment. The authorities ought to have dropped the proceedings and condoned the lapse on the part of the petitioner. Even otherwise the petitioner's conduct from 2006 appears to be quite proper and agreeable. On many occasions he was granted furlough leave and he surrendered within time on each occasion. At present he is in open jail.

7. The criminal writ petition deserves to be allowed in terms of prayer clauses (C) & (D) and petition stands disposed of accordingly.

8. Learned counsel for the petitioner Amicus Curie shall be paid legal remuneration as per rules.

[V.L.ACHLIYA, J.]

[A.V.NIRGUDE, J.]