

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

**CRIMINAL WRIT PETITION NO.801 OF 2016**

Ravindra s/o Yogiraj Paul,  
Age-28 years, Occu:Undergoing Jail  
Sentence at Harsul Central Jail,  
Aurangabad,  
R/o-Anand-Nagar, Tq. & Dist-Beed,  
Presently undergoing sentence at  
Central Jail Harsul, Aurangabad,  
(Convict No.7290)

**...PETITIONER**

**VERSUS**

- 1) The State of Maharashtra,  
Through the Secretary,  
Home Department, Mantralaya,  
Government of Maharashtra, Mumbai,
- 2) Deputy Inspector General of Prison,  
Aurangabad Division, Aurangabad,
- 3) The Superintendent Central Jail,  
Harsul, Aurangabad.

**...RESPONDENTS**

...  
Mr.S.A. Gaikwad Advocate for Petitioner.  
Mr.A.R. Borulkar, A.P.P. for Respondent  
Nos.1 to 3.

...

**CORAM: S.S. SHINDE AND  
SANGITRAO S. PATIL, JJ.**

**DATE : 6TH OCTOBER 2016**

**ORDER :**

. By way of this Petition, the Petitioner prays that the Government Notification dated 1st December 2015 to the extent of rule 4(a) issued by the Home Department, Government of Maharashtra, Mantralaya, Mumbai may be declared as unconstitutional and ultra vires and the same may be struck down. The Petitioner further prays that the order passed by Respondent No.2 thereby rejecting the furlough application of the Petitioner on 4th June 2016 may be quashed and set aside and the Petitioner may be released on furlough according to the procedure prescribed by law.

2. It is the case of the Petitioner that he is suffering sentence in Harsul Jail at

Aurangabad. He applied for grant of furlough to Respondent No.2 through Respondent No.3 on 26th February 2016. The said Application came to be rejected on 26th June 2016, on the ground that he is suffering sentence for the offences under Sections 376, 363 of the Indian Penal Code. The said order was passed relying on the Government Notification dated 1st December 2015.

3. The learned counsel appearing for the Petitioner submits that Notification impugned in this Petition could not have been made applicable in the case of the present Petitioner, since the Petitioner is convicted in the year 2012. The said Notification cannot be applied with retrospective effect and the same has to be applied in the cases of those convicts who are convicted after issuance of the impugned Notification dated 1st December 2015.

4. On the other hand, the learned A.P.P.

submits that the relevant date for application of the impugned Notification would be the date on which the Petitioner has filed application for furlough.

5. We have heard the learned counsel for the Petitioner and the learned A.P.P. for Respondents and perused the application and annexures thereto and the impugned Notification. The issue raised in this Petition is no longer *res integra* and has been covered by two authoritative pronouncements of this Court, viz. in the case of: (i) ***Subhash Hiralal Bhosale vs. State of Maharashtra and others, 2015(1) Mh.L.J. (Cri.) 664,*** and (ii) ***Santosh Namdeo Bhukan vs. State of Maharashtra, 2016(4) Mh.L.J. (Cri.) 83.***

6. In the cases cited supra also a similar issue was raised for consideration before the Division Bench of this Court. The Court considered the issue and held that the relevant date is the

date of filing of the application for furlough by the convict. In the facts of the present case, the Petitioner applied for furlough in the month of February 2016 when the impugned Notification was already brought in force. Therefore, keeping in view the ratio laid down in the aforesaid Judgments, we are unable to persuade ourselves to accept the request made by the Petitioner.

7. For the reasons stated above, the Writ Petition is rejected.

**[SANGITRAO S. PATIL, J.]**

asb/OCT16

**[S.S. SHINDE, J.]**