

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

CRIMINAL WRIT PETITION NO. 912 OF 2016

Jilani Mohiddin Pathan
(Convict No.C-8079)
Age : 69 years, Occ : Nil,
R/o Central Prison, Aurangabad .. **PETITIONER**

VERSUS

1. The State of Maharashtra,
Through Deputy Inspector General
[Prison],
Central Division, Aurangabad,
District Aurangabad
2. The Police Superintendent,
Central Prison,
Aurangabad. .. **RESPONDENTS**

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Mr. Gajendra Jain, Advocate (Appointed) for
the Petitioner
Mr. K.S. Patil, APP for Respondent - State.

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

DATE: 21st September, 2016

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ORAL JUDGMENT:- (Per S.S.Shinde, J.)

Rule. Rule made returnable
forthwith. Heard finally with the consent of
the learned counsel appearing for the
parties.

2. This Petition is filed taking exception to the order dated 19th May, 2016 passed by Respondent No.1.

3. The petitioner is convicted for the offence punishable under Section 302 of the Indian Penal Code. He is undergoing sentence in Aurangabad Central Prison. It is the contention of the petitioner that he applied for furlough by filing an application, however, his application has been rejected by Respondent No.1 on the ground that in the year 2008 when the petitioner was released on furlough, he overstayed for 42 days, in the year 2014, when he was released on parole, he overstayed for one day and thereafter in the year 2015, when he was released on furlough, he overstayed for 46 days, and therefore, in view of Rules 4(6) and 4(10) of the Furlough and Parole to Prisoners contained in Chapter XXXVII of the Maharashtra Prison Manual, 1979, his application for furlough cannot be considered.

4. The learned counsel appearing for the Petitioner invites our attention to para No.5 of the Petition, and submits that

when the petitioner was released, on account of search of his missing son, he could not report the jail authorities within time. It is submitted that this Court in the case of **Sarfuddin Aminuddin Vs. State of Maharashtra**¹ while interpreting Rule 4 (10) of the said Rules held that if the justifiable reasons for surrendering late are placed on record in that case, the Competent Authority was not right in rejecting application of the petitioner therein, on the ground that Rule 4 (10) of the said Rules is embargo for not entertaining the prayer for release on furlough leave. Therefore, the learned counsel appearing for the petitioner submits that the Petition may be allowed.

5. The learned APP appearing for the respondent - State submits that in view of the provisions of the said Rules, the Authority has rightly rejected the application praying for grant of furlough leave, and therefore, this Court may not interfere in the impugned order.

6 We have carefully considered the submissions of the learned counsel appearing

1. 2004 (1) Bom.C.R. (Cri.) 136

for the petitioner, and the learned APP appearing for the Respondent – State. With their able assistance, perused the pleadings in the Petition, grounds taken therein, annexure thereto and the relevant rules, and we are of the opinion that the petitioner has stated justifiable reasons for his overstay on earlier occasions, and therefore, the respondent authorities ought to have considered his application for furlough leave.

7. Therefore, in our opinion, ends of justice would be met, if the impugned Order is quashed and set aside, and the Respondent authority is directed to re-consider the prayer of the petitioner afresh keeping in view the peculiar facts of the case that the petitioner has placed on record justifiable reasons for his overstay on earlier occasions, over and above the period of furlough/parole sanctioned by the concerned authority.

8. In that view of the matter, the impugned order is set aside. The Respondent No.1 is directed to consider the prayer of the petitioner afresh uninfluenced by the

fact that the petitioner overstayed on earlier occasions. Such decision should be taken as expeditiously as possible, preferably within two weeks from receiving the copy of this order. It may be open for the respondent authorities to take appropriate action/decision in respect of overstaying by the petitioner in the years 2008, 2014 and 2015, if already action is not taken in accordance with law/procedure/rules.

9. Rule made absolute to the above extent. The petition stands disposed of accordingly.

10. The parties shall act upon authenticated copy of this order.

11. Since, Mr. Gajendra Jain, the learned counsel is appointed as Amicus Curie to prosecute the cause of the petitioner, his fees be paid as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

(SANGITRAO S. PATIL, J)

(S.S. SHINDE, J.)

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