

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 987 OF 2016

Shivraj s/o Keshavrao Pawar
(C-7084) (Convict)
Central prison, Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through I.G.
Prisons, Pune
2. The State of Maharashtra,
Through D.I.G.
Prisons, Aurangabad
3. The Superintendent,
Central Prison,
Aurangabad

...Respondents

.....
Mr. R.A. Jaiswal, advocate for the petitioner (appointed)
Mr. M.M. Nerlikar, A.P.P. for the respondents
.....

**CORAM : S. S. SHINDE AND
V. K. JADHAV, JJ.**

DATED: 29th SEPTEMBER, 2016

ORAL JUDGMENT(PER S.S. SHINDE, J.) :-

1. Rule. Rule returnable forthwith. By consent of parties, heard finally.

2. The petitioner is convict for the offence punishable under Section 302 of I.P.C. and undergoing the imprisonment for life in

Central Prison, Aurangabad. The petitioner had applied for furlough leave on 2.3.2016. Respondent No.2 rejected the said application. The petitioner had filed appeal before respondent No.1. However, the same also came to be rejected on 21.6.2016. Hence, this writ petition.

3. Learned counsel for the petitioner submits that it is true that, on earlier occasion, when the petitioner was released on furlough leave, he overstayed for 840 days, however, respondent State has punished him by removing his name from remission register. He further submits that the petitioner was released on parole on 17.11.2015 to 16.2.2016 i.e. for 90 days and he surrendered within time. Therefore, he submits that his application for furlough leave should not have been rejected by the respondents.

4. On the other hand, learned A.P.P. for the respondents submits that on earlier occasion, when the petitioner was released on furlough, he overstayed for 840 days. He was arrested and then again was lodged in jail. The conduct of the petitioner does not entitle to seek any relief from this Court. However, learned A.P.P. concedes that petitioner was released on parole from 17.11.2015 to 16.2.2016 for 90 days and he surrendered within time.

5. We have heard the learned counsel appearing of the petitioner as well as learned A.P.P. for the respondents. We have perused the averments made in the petition, annexures thereto and the affidavit in reply filed by the respondents.

6. The fact that the petitioner is already punished for his overstayed period of 840 days when he was released on furlough, by removing his name from remission register, is not disputed. The another fact that the petitioner was released on parole and even thereafter he surrendered within time is also not disputed. Therefore, in the facts and circumstances of this case, we are of the opinion that the respondents authorities ought to have considered the application of the petitioner on its own merits without being influenced by the fact that the petitioner surrendered late by 840 days when he was released on furlough.

7. In view of above, we direct respondent No.2 to reconsider the prayer of the petitioner for releasing him on furlough leave, in accordance with law, after verifying the record. The prayer shall not be rejected on the ground that earlier when the petitioner was released on furlough, he surrendered late by 840 days. Respondent No.2 to take decision afresh, as expeditiously as possible, however, within two weeks from today and communicate the said decision to

the petitioner.

8. With the above observations, writ petition is partly allowed and the same is disposed of. Rule is made absolute in the above terms.

9. Registry to issue authenticated copy of this order/judgment to the requesting party.

10. Since Mr. R.A. Jaiswal, advocate, is appointed as amicus curiae to prosecute the cause of the petitioner, his legal fees be paid as per the schedule maintained by the High Court, Legal Services Sub Committee, Aurangabad.

(V. K. JADHAV, J.)

(S. S. SHINDE, J.)

rlj/