

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 988 OF 2016

Kashinath s/o Maroti Puyad
(C-7077) (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 15.2.2016. 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 two occasions, when the petitioner was released on furlough leave, he overstayed for 229 days in the year 2011 and 175 days in the year 2013, however, respondent State has punished him by removing his name from remission register. Learned counsel submits that the petitioner was released on parole leave from 10.11.2015 to 9.2.2016 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 two occasions, when the petitioner was released on furlough leave, he overstayed for 229 days in the year 2011 and 175 days in the year 2013. 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 10.11.2015 to 09.2.2016 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, more particularly Exh. R-5, pages 28 and 29 wherein details are mentioned about furlough/parole leave granted to the petitioner on earlier occasions and by how many days he surrendered late and for which the action was taken by the respondents.

6. The fact that the petitioner is already punished for his overstayed period by removing his name from remission register, he cannot be punished twice. The another facts that petitioner was released on parole leave from 10.11.2015 to 9.2.2016 i.e. for 90 days and he surrendered within time is also not disputed. Therefore, in the facts and circumstances of this case, ends of justice would meet in case the respondents are directed to reconsider the prayer of the petitioner for releasing him on furlough leave.

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 on earlier two occasions when the petitioner was released on furlough leave, he surrendered late. 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/