

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 493 OF 2017

Sikandar Ali Yawar Ali Mirza
age 34 years, occ. prisoner
r/o Georai, Tq. Georai
Dist. Beed.

Petitioner

Versus

1. The State of Maharashtra
Through its secretary
Department of Home Affairs
Mantralaya, Mumbai 400 032.
2. The Deputy Inspector General of Jail
Yerwada, Pune
3. The Superintendent of Jail
Yerwada Central Jail,
Pune 411 006.
4. The Divisional Commissioner
Pune Division, Pune

Respondents

Mr. G.R. Syed, advocate for the petitioner.
Mr. K.D. Mundhe, A.P.P. for all respondents.

**CORAM : R.M.BORDE &
A. M. DHAVAL, JJ.
DATE : 9th JUNE, 2017**

ORAL JUDGMENT : (PER R. M. BORDE, J.)

1. Rule. Rule made returnable forthwith.
2. Heard finally with the consent of the learned counsel for the respective parties.

3. Petitioner, who is a prisoner lodged in Central Prison at Yerwada was directed to be released on furlough leave for a period between 08.12.2015 to 08.01.2016. The prisoner, because of certain unavoidable circumstances, reported late by one day i.e. on 09.01.2016. It is the contention of petitioner that he underwent a minor surgery and his presence was necessary at the hospital on 09.01.2016 for removal of stitches. The operating doctor removed the stitches on 09.01.2016 at Ruby Hospital, Pune and, immediately, on the same day, he reported at the jail.

4. The act of petitioner by reporting late by one day was not a deliberate act and he was required to remain away from the prison for health reasons. The prison authority considering the undertaking submitted by petitioner in terms of Rule 11 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, has refused request of petitioner for return of security deposit amounting to Rs. 12,000/-. According to us, the penalty imposed is too harsh and not proportionate with the unintentional lapse committed by the petitioner. As has been recorded above, the petitioner has not deliberately flouted the undertaking sine he was required to remain away from the prison because of health reasons.

5. Considering Rule 11 of the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959, we are of the opinion that the authorities are invested with discretionary powers in respect of imposition of penalty or forfeiture of amount of security deposit and, in our view, such discretion needs to be exercised considering

the gravity or seriousness of breach committed by a prisoner. The decision taken by the prison authority of forfeiture of whole of the security deposit amounting to Rs. 12,000/- is too harsh and disproportionate with the alleged unintentional lapse on the part of the petitioner. In the circumstances, we direct forfeiture of security deposit amounting to Rs. 500/- instead of Rs. 12,000/- as ordered by the prison authority. Rule is accordingly made absolute.

(A.M. DHAVALA)
JUDGE

(R.M.BORDE)
JUDGE

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