

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1044 OF 2017

Sudhakar s/o Waman Sawant (C-7165),
Age-Major, Occu:Cook in Prison,
R/o-Pimprala, Dist-Jalgaon,
At present: Central Prison,
Nashik Road, Nashik.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through its Secretary,
Home Department, Mantralaya,
Mumbai-400032,
- 2) The Inspector General of Prisons,
Maharashtra State, Pune-1,
- 3) The Deputy Inspector General
of Prisons, Aurangabad Division,
Dist-Aurangabad,
- 4) The Superintendent of Central Prison,
Nashik Road, Nashik.

...RESPONDENTS

...

Mr.Y.L. Bidve Advocate appointed for
Petitioner.

Mr.D.R. Kale, A.P.P. for Respondent
Nos.1 to 4.

...

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

DATE : 30TH OCTOBER, 2017

ORAL JUDGMENT [PER S.S. SHINDE, J.] :

1. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2. This Petition under Articles 226 227 of the Constitution of India is filed with following substantive prayer:

"B. By issuing writ of mandamus or any other appropriate writ order or directions in the like nature this Hon'ble Court may be pleased to quash and set aside the impugned order dt.02/05/2017 passed by Respondent No.2 and consequently by allowing this petition grant Furlough to the

petitioner."

3. Learned counsel appearing for the Petitioner invites our attention to the reasons assigned by Respondent No.2 in the impugned order and submits that for genuine reasons, the Petitioner overstayed for few days when he was released earlier on parole/furlough. It is submitted that on two occasions i.e. on 29th August, 2011, and on 22nd October, 2013, when petitioner was released on furlough, the Petitioner reported late by 5 and 7 days respectively. It is submitted that on third occasion when the Petitioner was released on parole for thirty days on 5th July, 2014, he overstayed for 119 days since he was suffering from appendix and he was required to be treated during the said period. It is submitted that on account of overstay of the Petitioner, already Respondent authorities have deducted the remissions. It is submitted that the Division

Bench of the Bombay High Court, Bench at Nagpur in the case of Raju @ Rajabhau Bhagwantrao Wankhede vs. The D.I.G. Prisons(E)(R) and another¹, has taken a view that if the remissions of a convict are deducted, who overstayed when he was released on furlough/parole, in that case such convict cannot be prevented from filing the application for releasing him on furlough/parole. It is submitted that since the remissions were deducted on account of overstay of the Petitioner for 119 days, for the same reason, the Respondents should not have rejected the application filed by the Petitioner to release him on furlough. In support of aforesaid contentions, our attention is invited to the relevant observations of the Division Bench of this Court in the case of Raju @ Rajabhau Bhagwantrao Wankhede vs. The D.I.G. Prisons(E)(R) and another, supra, in Paras 15 and 16 of the Judgment, which are as under:

1 2015 ALL M.R.(Cri) 1834

"15. As noticed earlier, the full bench of Gujarat High Court in the Case of Bhikabhai Devshi(supra) has held that the later part of Rule 4 (10) namely, "where the prisoner has defaulted in any way in surrendering himself at the appropriate time after release on parole of furlough", the word "shall" as used in the opening part of Rule 4 has been held to be directory. It has been held that it should be read as "may". This view has also found favour with the Division Bench in Criminal Writ Petition No.1624/2004 [Bharat @ Vejji Govindji Panchal @ Lohar vs. The State of Maharashtra and others]. Even in the case of Ramchandra Naik [2005 ALL MR (Cri) 1919] (supra), this court has held that the question would depend on facts of each case and where the petitioner can justify the overstay on account of the circumstances which may be beyond his control such as where the prisoner is compelled to to overstay on account of some serious ailment or illness, either of himself or his family

member, or for some other justifiable cause, certainly an exception can be made. It can thus be seen that this court had time and again held that Rule 4 (10) cannot be read to mean as imposing absolute fetters on the powers of the competent authority to release the prisoner on furlough particular when the case of such a prisoner falls within the later part of Rule 4(10) of the 1959 Rules.

16. Shri Kaptan, the learned Senior Counsel has placed reliance on a decision of this court in the case of Anil Laxman Jawade vs. State of Maharashtra and another, reported in 2007(4) Mh.L.J. 25: [2007 ALL MR (Cri) 1865]. In that case, on earlier occasion, the petitioner did not surrender on due date and was required to be arrested by the police. His request for release was rejected under Rule 4 (10) of the 1959 Rules. The challenge was to the rejection of such a request. The principal submission which was canvassed before the Division Bench was that, when substantive

punishment under the Prison Rules was already awarded by the Competent Authority to the petitioner for late surrender, the legal right to get furlough leave in future, cannot be taken away. This Court on noticing the provisions of Rule 9 of the 1959 Rules, which entitles the prisoner to make a fresh application for furlough leave, after expiry of six months, from the date of rejection of his previous application, held that the conjoint reading of Rules 4 and 9 of the 1959 Rules would show that the authorities can consider such an application if made after an expiry of six months. This court found that on a harmonious interpretation of these two rules, although the Jail Authorities are entitled to reject the application for furlough leave on the ground of later surrender, the prisoner can always make a fresh application for furlough leave after six months and by necessary implication, authorities will have to consider the same, on its own merits."

4. On the other hand, learned A.P.P. appearing for the State, relying upon the reasons recorded in the impugned order and also the averments in the affidavit in reply filed by one Mr. Rajkumar Keshavrao Sali, presently serving as Superintendent, Nashik Road Central Prison, Nashik and the annexures thereto, submits that keeping in view the earlier record of the Petitioner that when he was released on furlough/parole, he did not report back to the jail within time, the application of the Petitioner to release him on furlough has been rightly turned down. He further submits that in case of release of the Petitioner on furlough/parole he may abscond, and might not be available to undergo the remaining sentence.

5. Upon hearing learned counsel appearing for the Petitioner and learned A.P.P. appearing for the State and upon perusal of the grounds taken in the Petition and also the reply filed by

Respondent No.4, we are of the opinion that merely because the Petitioner, when he was released on earlier occasions on furlough/parole, reported back late, cannot be construed as an impediment to the Petitioner for filing another application for furlough in view of the fact that on account of overstay, already remissions have been deducted. We find considerable force in the argument of counsel appearing for the Petitioner that similar issue has been considered in the case of Raju @ Rajabhau Bhagwantrao Wankhede vs. The D.I.G. Prisons(E)(R) and another, supra. Keeping in view the observations in the said Judgment, we are inclined to quash and set aside the impugned order.

6. Accordingly, the impugned order is quashed and set aside. The Petitioner is at liberty to file the application afresh. In case such application is filed, Respondent No.3 to decide the same in accordance with law as

expeditiously as possible, but in any case within four weeks from filing such application, however by ignoring the reasons mentioned in the impugned order.

7. The Writ Petition is partly allowed. Rule made absolute on above terms. The Writ Petition stands disposed of, accordingly.

8. We appreciate the sincere efforts taken and able assistance rendered by learned counsel Mr. Y.L. Bidve during the course of hearing of the Petition. Since Mr. Y.L. Bidve, learned counsel is appointed 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.

[MANGESH S. PATIL, J.]

[S.S. SHINDE, J.]