

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Writ Petition No.266 of 2017
(Ramsing s/o. Mangilal Yadav .vs. State and another)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Mr.Nitesh Samundre, Advocate for the Petitioner.
Mr.Ambarish Joshi, A.P.P. for the Respondents 1 and 2.

CORAM : SMT VASANTI A NAIK &
M. G. GIRATKAR, JJ.

DATE : 31.8.2017.

By this Criminal Writ Petition, the petitioner challenges the order of the D.I.G. (Prisons), Nagpur, dt.9.1.2017 rejecting the application of the petitioner for grant of furlough leave of 28 days.

The learned Counsel for the petitioner submitted that the petitioner cannot be barred from seeking the furlough leave merely because he has overstayed the parole leave on the earlier occasion by 1164 days and was required to be arrested by the Police Authorities and brought back to the prison, 375 days after the expiry of the furlough leave. It is stated that a convict is entitled to apply for grant of furlough leave after every six months in view of Rule 9 of the Prisons (Bombay Furlough and Parole) Rules, 1959. It is submitted that, in the year 2007, the petitioner has surrendered belatedly by 1164 days and when he was released on parole leave in 2011, he had surrendered late by only 164 days. It is submitted that during the past five

years, about five furlough leave applications made by the petitioner have been rejected. The learned Counsel has relied on the Judgment reported in 2014 ALL MR (Cri) 1309, Sitaram Rajaram Deokar .vs Deputy Inspector General of Prison, East Nagpur and another and the unreported order of this Court dt.5.10.2010 in Criminal Writ Petition No.506 of 2010 to seek the relief claimed.

Mr.Ambarish Joshi, the learned Additional Public Prosecutor appearing for the respondents has supported the order of the D.I.G. (Prisons). It is submitted that the furlough leave of the petitioner was rightly rejected by resorting to the provisions of Rule 4(4), (6) and (10) of the Prisons (Bombay Furlough and Parole) Rules, 1959. It is stated that furlough leave shall not be granted to the category of the prisoners that are provided in Rule 4 of the Rules. It is stated that, in the instant case, the petitioner has surrendered belatedly after he was released on parole and furlough leave on each of the occasions. It is submitted that the petitioner had surrendered belatedly by 1164 days when he was released on parole leave in the year 2007. It is stated that not only is the petitioner habitually overstaying the furlough and parole leave but when the petitioner does not surrender on the due dates and the Police Authorities seek information about the whereabouts of the petitioner from his relatives who give surety while releasing the petitioner on parole or furlough leave, the said relatives do not cooperate with the police and do not inform them about the whereabouts of the petitioner. It is stated that the consideration for grant of furlough leave and emergency parole leave is different.

On hearing the learned Counsel for the parties and on a perusal of the impugned order as also the affidavit-in-reply filed on behalf of the respondent no.2, it appears that the prayer made by the petitioner in this Writ Petition cannot be granted. On each and every occasion when the petitioner was granted furlough or parole leave, the petitioner had not surrendered on the due dates. In the year 2007, when the petitioner was released on parole leave, he had surrendered belatedly by 1164 days and in 2011 by 164 days.

Rule 4 of the Rules of 1959 provides that the categories of prisoners' mentioned in several sub-rules of Rule 4 would not be considered for release on furlough. Sub-Rule 10 of Rule 4 provides that the prisoners who had defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough leave would not be considered for release on furlough leave. The provisions of Rule 4(10) clearly stipulates that the prisoners who default in any way in surrendering themselves at the appropriate time would not be entitled to be released on furlough leave.

In the instant case, though the petitioner was released on furlough leave on seven occasions after he was made to suffer imprisonment, on each of the occasions, the petitioner has surrendered belatedly and on one occasion, he was required to be arrested by Police and brought back to the prison more than 375 days after the expiry of the furlough leave. Still, it appears that the parole leave was granted to the petitioner in the years 2007 and 2011 as the considerations for grant of furlough leave and emergency

parole leave are different. On reading of Rule 19 of the Rules, it appears that regular Parole leave could be granted under sub-rule 2 of Rule 19 to prisoners who are eligible for furlough leave. Hence, it is clear that the considerations for securing emergency parole leave under Rule 19(1) and regular parole leave and furlough leave are entirely different. A furlough leave could be rejected to a prisoner if he falls within any of the categories of the prisoners mentioned under Rule 4. Though Rule 4 may not be strictly applied, since the petitioner had belatedly surrendered after 1164 days and 164 days when he was last released on parole leave, we do not find any infirmity in the order of D.I.G. (Prisons) in rejecting the application of the petitioner for grant of furlough leave. It would not be for this Court to sit in appeal over the decision of the D.I.G. (Prisons) rejecting the application of the petitioner for grant of furlough leave, when the order is clearly supported by the provisions of Rule 4 (10) of the Rules of 1959. In view of the Rules, an application made by the petitioner for furlough leave on one or more occasions could be rejected under the provisions of Rule 4 of the Rules. As rightly stated on behalf of the respondents, since the considerations for grant of emergency parole leave and furlough leave are different, the petitioner would not be entitled to furlough leave by ignoring the provisions of Rule 4 of the Rules, specially when the petitioner had overstayed the parole leave by 1164 days. We also find from the reply filed on behalf of the respondents that the relatives of the petitioner who had furnished surety at the time of release of the petitioner on parole or furlough leave do not cooperate with

the police machinery when the petitioner does not surrender on the expiry of parole or furlough leave and his whereabouts are not informed by the relatives to the police Authorities. We do not find any fault with the order of the D.I.G. (Prisons), rejecting the application for furlough leave. The Judgment reported in 2014 ALL MR (Cri) 1309 (supra) and relied upon by the learned Counsel for the petitioner cannot be applied to the case in hand. In the said Judgment, by considering that the provisions of Rule 4 are not mandatory, the Court had allowed the Writ Petition filed by the petitioner therein as he had overstayed the furlough leave on the earlier occasion by 22 days. The factual scenario in the said case and the present case is different. Also, the order dt.5.10.2010 is distinguishable on facts. In the said case the petitioner had reported late by 768 days in 2004 and thereafter, by 125 days and the petitioner therein was only granted liberty to apply again in the year 2012.

Since the relief sought by the petitioner cannot be granted, we dismiss the Criminal Writ Petition. Order accordingly.

JUDGE

JUDGE

**jaiswal*