

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO. 47/2017

(RAMKRUSHNA PUSAJI KUSRAM (IN JAIL) **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Shri Ashwin Deshpande, Appointed Counsel for the petitioner.
 Shri A.M. Joshi, A.P.P. for the respondents.

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

DATE : AUGUST 28, 2017.

By this Criminal Writ Petition, the petitioner challenges the order of curtailing the remission period of the petitioner by 400 days.

The petitioner was convicted for an offence punishable under section 302 of Penal Code. The petitioner was undergoing the punishment in Morshi open prison. The petitioner made an application for grant of furlough leave of 30 days, as his father was sick and ailing and leave was granted to the petitioner by an order dated 24.11.2011. Since the father of the petitioner did not recover and was seriously ill, the petitioner made application for extension of the furlough leave. The application of the petitioner was however rejected on the ground that the petitioner had submitted the same medical certificates by changing the dates. Since the health of the father of the petitioner did not improve, the petitioner did not surrender on the expiry of the furlough leave period. On 14.03.2012, the father of the petitioner expired, and on the tenth day of the death of the father of the petitioner, the police came to the house of the petitioner and arrested him. The petitioner was brought to the Prison. By

applying the multiplier of five, the remission period of the petitioner was reduced by 400 days as the petitioner had overstayed the furlough leave by 80 days.

Shri Deshpande, learned counsel for the petitioner, submitted that a lenient and sympathetic view needs to be taken in the matter of the petitioner as it is apparent from the death of the father of the petitioner on 14.03.2012 that the reason stated by the petitioner in the application for extension of furlough leave was genuine. It is submitted that the petitioner could not have left his ailing father in the house and surrendered at the expiry of the furlough leave. It is submitted that in the peculiar facts of the case, the order of reducing the remission period of the petitioner by 400 days needs to be quashed and set aside.

Shri Joshi, the learned Additional Public Prosecutor appearing for the respondents, submitted that the application made by the petitioner for extension of furlough leave was rightly rejected as the petitioner submitted the same medical certificates for extension of furlough leave by only changing the dates on the same. It is however not disputed that the father of the petitioner expired on 14.03.2012 and the petitioner was brought back to the prison on the tenth day after his father expired.

As rightly submitted on behalf of the petitioner, a lenient view needs to be taken in the case of the petitioner. The father of the petitioner was ailing and the petitioner had availed the furlough leave to nurse his ailing father. The health of the father of the petitioner did not improve and hence, the petitioner had sought for extension of furlough leave. It is the case of the petitioner that the petitioner

believed that he could have tendered the same medical certificates to the respondents for seeking the extension of furlough leave. Since the father of the petitioner had expired only a couple of months from the date of expiry of furlough leave, it would be necessary to quash and set aside the impugned order reducing the remission period of the petitioner by 400 days.

Hence, for the reasons aforesaid, in the peculiar circumstances, the criminal writ petition is allowed. The impugned orders are quashed and set aside. The professional fees of the learned counsel for the petitioner are quantified at Rs.1,500/-.

Order accordingly.

JUDGE

JUDGE

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