

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

CRIMINAL WRIT PETITION NO. 404/2017

(YUSUF SHERBAHADUR KHAN (IN JAIL) **VERSUS** THE D.I.G. OF PRISON (E)(R), NAGPUR & OTHERS)

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

Court's or Judge's orders

Mrs. S.P. Dhotre, Appointed Counsel for the petitioner.
Mrs. N.R. Tripathi, Additional Public Prosecutor for the respondents.

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

DATE : AUGUST 14, 2017.

By this criminal writ petition, the petitioner challenges the order of the D.I.G. Prisons, Nagpur, dated 07.02.2017 and seeks the release of the petitioner on furlough leave for 28 days.

It appears that the application of the petitioner for grant of furlough leave is rejected on the ground that the petitioner is a resident of a particular area in Powai which falls under the Thane police station and since the said area is a sensitive area, the petitioner is likely to commit an offence if he is released on furlough leave. The second reason for rejecting the application of the petitioner for furlough leave is that in the year 2011, the petitioner had belatedly surrendered himself, 31 days after the expiry of the furlough leave.

We are not inclined to uphold the order of the D.I.G. Prisons, Nagpur. It would not be proper for the respondent no.1 to reject the application of the petitioner on the ground that if the petitioner is released on furlough leave he is likely to commit the same offence. Though the

petitioner is the resident of Filterwada area of Powai, the petitioner was earlier released on furlough leave in the year 2009, 2011, 2014 and 2015 and on those occasions, the leave of the petitioner was not rejected on the said ground. We find that there is no merit in the rejection of the furlough leave on the ground that the petitioner has surrendered in the prison, 31 days after the expiry of the furlough leave in the year 2011. After 2011, the petitioner was further released on furlough leave in the year 2014 and 2015 and on those occasions he had surrendered on the due dates. Both the grounds for rejecting the furlough leave of the petitioner are devoid of merit. Also, the petitioner has undergone the sentence of nearly thirteen years. In the circumstances of the case, the respondent no.1 ought to have allowed the application of the petitioner for grant of furlough leave.

Hence, for the reasons aforesaid, the writ petition is allowed. The respondent no.1 is directed to release the petitioner on furlough leave of 28 days within seven days from the date on which the relative of the petitioner furnishes the surety as is required by Rule 6 of the Prisons (Bombay Furlough and Parole) Rules, 1959. Since the counsel for the petitioner is appointed through the Legal Aid Sub Committee, Nagpur, we quantify her professional fees at Rs.1,500/- which may be paid to the counsel, at the earliest.

Order accordingly.

JUDGE

JUDGE