

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

CRIMINAL WRIT PETITION NO. 562/2017

(MURTAZA @ MUNNA DAWAL SHEIKH **VERSUS** THE D.I.G. (PRISONS) (E) NAGPUR & ANOTHER)

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

Court's or Judge's orders

Shri Mir Nagman Ali, counsel for the petitioner.
Shri P.S. Tembhare, Additional Public Prosecutor for the respondents.

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

DATE : AUGUST 09, 2017.

By this criminal writ petition, the petitioner challenges the order of the D.I.G. (Prisons), Nagpur, dated 24.05.2017 rejecting the application filed by the petitioner for grant of furlough leave of 28 days.

It is stated on behalf of the petitioner that the furlough leave of the petitioner is rejected on two grounds, which are not acceptable. It is stated that firstly the furlough leave of the petitioner is rejected as the mother-in-law of the petitioner is ready to furnish the surety for the petitioner and according to the respondent, the mother-in-law would not have control over him. It is stated that the second reason for the rejection of the application is the reliance placed by the D.I.G. (Prisons) on Rule 4(11) of the Prisons (Bombay Furlough and Parole) Rules, 1959, that are amended in the year 2016. It is stated that Rule 4(11) is absolutely arbitrary inasmuch as the object of granting parole or furlough leave to the prisoners would get frustrated only because an appeal is filed by them against their conviction or any appeal is filed by the State or the Central Government against them and the

bail is rejected. It is submitted that since the petitioner is convicted for the offence punishable under Section 302 of the Penal Code and since the said offence is not included in the offences under Rule 4(13) of the Rules which would disentitle a convict for grant of furlough or parole leave, the petitioner would be entitled to the furlough leave. It is stated that Rule 4(11) has been challenged in Criminal Writ Petition No.197 of 2017 and since this Court had found that a *prima-facie* case was made out by the petitioner therein, furlough leave was granted to him.

In the circumstances of the case, we find that the D.I.G. (Prisons), Nagpur was not justified in rejecting the application of the petitioner for grant of furlough leave. The petitioner has already undergone the sentence of more than seven years and there is no prohibition for release of a convict who is sentenced for the offence punishable under Section 302 of the Penal Code under Rule 4(13) of the Rules, as amended in the year 2016. We also do not appreciate the rejection of the application of the petitioner on the ground that the mother-in-law of the petitioner, who is ready to furnish surety, would not be able to have any control over the petitioner. In the circumstances of the case, it would be necessary to direct the respondent no.2 to grant furlough leave of 28 days to the petitioner on furnishing surety as per Rule 6 of the Rules.

Hence, for the reasons aforesaid, the writ petition is allowed. The D.I.G.(Prisons), Nagpur is directed to release the petitioner on furlough leave of 28 days within seven days from the date on which the petitioner furnishes the surety as per Rule 6 of the Rules.

Order accordingly.

JUDGE

JUDGE

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