

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

CRIMINAL WRIT PETITION NO. 566/2017

(RAGHUNATH @ RAGHU ZANAKRAO DHURVE (IN JAIL) **VERSUS** THE D.I.G. (PRISONS) (E) (R)
 NAGPUR & ANOTHER)

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

Court's or Judge's orders

 Mrs.Sneha S. Dhote, Appointed Counsel for the petitioner.
 Shri K.R. Lule, 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 01.02.2017 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 application of the petitioner for grant of furlough leave is rejected by the D.I.G. (Prisons) by placing wrongful reliance 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. It is also stated that the police verification report in the case of the petitioner is favourable 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 four 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. Moreover, the police verification report is favourable to 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. 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. No costs.

JUDGE

JUDGE

APTE