

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

CRIMINAL WRIT PETITION NO. 693/2017

(SUMIT @ SANDY ASHOK BHASME (IN JAIL) **VERSUS** THE DIG OF PRISON (E) (R), NAGPUR & ANR)

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

Court's or Judge's orders

 Ms. S.B. Khobragade, counsel for the petitioner.
 Mrs.N.R. Tripathi, A.P.P. for the respondents.

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

DATE : SEPTEMBER 22, 2017.

By this criminal writ petition, the petitioner challenges the order of the D.I.G. Prisons, Nagpur, dated 15.07.2017 rejecting the application of the petitioner for grant of furlough leave.

Ms Khobragade, the learned counsel for the petitioner, submitted that though the relative of the petitioner, as suggested by him, is not ready to furnish surety for the petitioner's release, the mother of the petitioner is ready to furnish the surety and her case could be considered. It is stated that merely because the appeal filed by the petitioner against his conviction is pending, the application of the petitioner could not have been rejected by resorting to Rule 4(11) of the Rules. It is stated that Rule 4(11) is challenged in a number of writ petitions and this Court has prima-facie found that Rule 4(11) is unjust and unreasonable. It is submitted that Rule 4(13) could not have been applied to the case of the petitioner as the petitioner is not convicted for the offence of rape but the trial for the offence of rape is pending against the petitioner.

On hearing the learned counsel for the parties and on a perusal of the impugned order, it appears that an opportunity needs to be granted to the petitioner to avail the furlough leave as the petitioner has for the first time sought for the release on furlough leave. The petitioner had never sought parole or furlough leave earlier. Rule 4(13) could not have been applied to the case of the petitioner as the petitioner is not convicted for the offence of rape and Rule 4(13) would apply only after the prisoner is convicted for the offence of rape. Though the relative of the petitioner, as suggested by him, is not ready to furnish surety, the mother of the petitioner is ready to furnish the surety and the respondents may consider whether the mother of the petitioner would be a fit surety as per Rule 6 of the Rules.

Hence, for the reasons aforesaid, the writ petition is allowed. The respondents are directed to release the petitioner on furlough leave after verifying whether the mother of the petitioner could furnish surety for his release. If according to the respondents the mother of the petitioner would not be a proper person to furnish surety, the petitioner may be permitted to furnish the name of any other relative so that the petitioner could be released on furlough leave.

Order accordingly.

JUDGE

JUDGE