

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

CRIMINAL WRIT PETITION NO. 742/2017

(KUNAL MOTIRAM MASKE (IN JAIL) **VERSUS** THE STATE OF MAHARASHTRA & ANOTHER)

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

Court's or Judge's orders

Ms S.D. Wankhede, counsel for the petitioner.
 Ms N.R. Tripathi, A.P.P. for the respondents.

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

DATE : AUGUST 29, 2017.

By this criminal writ petition, the petitioner challenges the order of the D.I.G. Prisons, Nagpur, dated 21.07.2017 rejecting the application of the petitioner for grant of furlough leave of twenty one days.

The learned counsel for the petitioner submits that the provisions of Rule 4(11) of the Prisons (Bombay Furlough and Parole) Rules, 1959 have been challenged before this Court by a couple of writ petitions and since this Court has found a *prima-facie* case in favour of the petitioners in the said writ petitions, the Court had directed the respondents to release the petitioners in the said petitions on furlough leave. It is stated that in the instant case also, merely because an appeal filed by the convict is pending in this Court, the furlough leave could not have been rejected.

Ms Tripathi, the learned Additional Public Prosecutor appearing for the respondents, states that the furlough leave of the petitioner is not rejected only by relying on the provisions of Rule 4(11) of the Rules of 1959 but is also rejected as the co-accused who was released on furlough leave has not surrendered as yet.

We do not find any merit in both the reasons recorded in the impugned order for rejecting the furlough leave. In several writ petitions where furlough leave is rejected solely by relying on Rule 4(11) of the Rules, we have granted furlough leave. Also, merely because the co-accused is absconding after he was released on furlough leave, the petitioner cannot be penalized for the misconduct of the co-accused. Since the application of the petitioner for grant of furlough leave could not have been rejected, it would be necessary to quash and set aside the impugned order and direct the respondents to release the petitioner on furlough leave.

Hence, for the reasons aforesaid, the writ petition is allowed. The respondents are directed to release the petitioner on furlough leave within seven days from the date on which the relative of the petitioner furnishes the surety as is required by the provisions of Rule 6 of the Rules of 1959.

Order accordingly.

JUDGE

JUDGE

APTE