

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Writ Petition No.855 of 2017

***(Bhupesh @ Rinku Vitthalrao Tichkule .vs. The Divisional Commissioner, Nagpur Division,
Nagpur and another)***

 Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.

Court's or Judge's Orders

Mr.Mir Nagman Ali, Advocate for the petitioner.
Mrs.Nandita Tripathi, A.P.P. for the Respondents 1 and 2.

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

DATE : 14.9.2017.

By this Criminal Writ Petition, the petitioner challenges the order of the Divisional Commissioner, Nagpur dt.31.8.2017 rejecting the application of the petitioner for grant of parole leave.

The petitioner has sought for parole leave as the father of the petitioner is suffering from Ischemic Heart disease, Diabetes and Hypertension and requires rest and attention. The said fact is verified by the Police and it is stated in the Police Verification Report that the father of the petitioner is suffering from an ailment. The petitioner is convicted and sentenced for an offence punishable under Section 302 of the Penal Code and the appeal filed by the petitioner against the said conviction is pending in this Court. It appears that the application of the petitioner for grant of parole leave is rejected solely on the ground that the appeal filed by the petitioner against his conviction is pending in the High Court and under Rule 4(11) of the

Prisons (Bombay Furlough and Parole) Rules, 1989, a prisoner is not entitled to furlough leave or parole leave under Rule 19(2) of the Rules, if the appeal is pending.

The provisions of Rule 4(11) of the Rules are challenged in a couple of Writ Petitions and this Court has prima facie observed that the said Rule is bad in law as the same is not in consonance with the object for grant of parole or furlough leave. In the said couple of Writ Petitions, this Court has granted furlough and parole leave to the petitioners therein after observing that the application for leave could not have been rejected by relying on Rule 4(11) of the Rules merely because the appeal filed by the prisoner is pending.

Since the only ground for rejection of the parole leave application of the petitioner is that the appeal filed by the petitioner is pending in this Court and since in all other matters where parole or furlough leave application is rejected on this ground, we have directed the respondents to grant parole or furlough leave to the prisoners by allowing this Writ Petition and quashing and setting aside the impugned orders, we direct the respondents to release the petitioner on parole leave within seven days from the date on which the relative of the petitioner furnishes surety for release of the petitioner on parole. Order accordingly.

JUDGE

JUDGE

**jaiswal*