

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Writ Petition No. 01653 of 2017

District : Nandurbar

Hanif Gulam Rasool Makrani,
Age : Major,
Occupation : convict no.C/9118,
R/o. At Nashik Road Central
Prison, Nashik.

.. Petitioner.

versus

1. The State of Maharashtra,
Through Principal Secretary,
Home Department, Mantralaya,
Mumbai.
 2. The Divisional Commissioner,
The Divisional Commissioner
Office, At Nashik Road,
Nashik.
 3. The Superintendent of
Nashik Road Central Prison,
Nashik.
 4. The Deputy Inspector General
(Prison), Central Prison,
Harsool, Aurangabad.
 5. The Maharashtra Prison Department,
Additional Director General of
Police and Inspector General
of Prison & Correctional
Services, Pune - 1.
- .. Respondents.

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*Mrs. Almas Shaikh Riyaz, Advocate (appointed),
for the petitioner.*

*Mr. S.W. Munde, Addl. Public Prosecutor, for
respondent nos.01 to 05.*

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**CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 08TH MARCH 2018

ORAL JUDGMENT [Per Prasanna B. Varale, J.] :

Heard learned Counsel (appointed) for the petitioner and the learned Addl. Public Prosecutor for the respondents.

02. By the present petition, the petitioner - convict no. C-9118 is challenging the order dated 03.11.2015, passed by respondent no.04 i.e. Deputy Inspector General of Prisons, Aurangabad, thereby rejecting application made by the petitioner seeking furlough leave. The petitioner has also challenged the order dated 29.02.2016, passed by respondent no.05 i.e. Addl. D.G.P. & Inspector General of Prisons, Pune, thereby rejecting appeal preferred by the petitioner.

03. By inviting our attention to the orders and more particularly, the order of the appellate authority, learned Counsel for the petitioner submitted that only on technical grounds, prayer of the petitioner for furlough leave is rejected. The reasons assigned in the order are, of belated surrender and the surety not competent enough to control the activities of the petitioner. Learned Counsel then submitted, both these grounds are unsustainable. He further submits, that there is

clear error in referring to earlier surrender in the order. Learned Counsel further submits, that in the year 2014, the petitioner was granted leave initially for 30 days and then the leave was extended by 60 days and on that occasion, the surrender was belated only by 03 days. Learned Counsel then submitted that merely because the petitioner reported prison authorities belatedly, the authority rejected the prayer for furlough leave assigning the ground that the brother of the petitioner is not competent enough to control the activities of the petitioner.

04. Learned Addl. Public Prosecutor appearing for the respondents was also directed to take instructions in respect of belated surrender as mentioned in the impugned order dated 29.02.2016 wherein it is stated that the petitioner surrendered to the prison authorities on earlier occasion lately by 63 days. Learned Addl. Public Prosecutor, on instructions, submitted that it is an error. He submits, that though the petitioner surrendered to prison authorities belatedly, extension of leave for a period of 60 days was granted in favour of the petitioner. As such, in the impugned order, it ought to have been mentioned that on earlier occasion, the petitioner surrendered late by 03 days. Learned Addl. Public Prosecutor further submitted that this mistake or error occurred because of the fact, that on the day when the impugned order was passed i.e. 29.02.2016, extension of furlough leave of 60 days, as sought by the petitioner, was not granted and it

was subsequently granted on 04.04.2017.

05. Thus, the learned Addl. Public Prosecutor was justified in respect of the error occurred in the impugned order dated 29.02.2016, which inadvertently mentions that the petitioner on earlier occasion surrendered late to prison authorities by 63 days, whereas the petitioner surrendered late by 03 days.

06. Though the learned Addl. Public Prosecutor opposes the petition on the ground that the surety of the petitioner is not competent enough to control the activities of the petitioner, we are unable to accept the submission of the learned Addl. Public Prosecutor. There is absolutely no material so as to arrive at a conclusion that the brother of the petitioner, who offered himself to stand as surety of the petitioner, is unable to control activities of the petitioner. So also, the ground that on earlier occasion the petitioner surrendered to prison authorities belatedly by 03 days, is also unsustainable. Moreover, though the record shows that on earlier two occasions, the petitioner surrendered to prison authorities belatedly, appropriate punishment was granted by prison authorities on that count.

07. Considering the facts and circumstances of the case, we are of the opinion that the learned Counsel for the petitioner has made out a case for grant of relief as prayed in the petition.

08. In the result, the criminal writ petition is allowed.

The impugned order dated 03.11.2015, passed by respondent no.04 i.e. Deputy Inspector General of Prisons, Aurangabad, so also, order dated 29.02.2016, passed by respondent no.05 i.e. Addl. D.G.P. & Inspector General of Prisons, Pune, are quashed and set aside. The petitioner - convict is directed to be released on furlough leave, as expeditiously as possible, after complying necessary formalities.

09. Learned Advocate Mrs. Almas Shaikh Riyaz was appointed to represent case of the petitioner. Her fees is quantified at Rs. 3,000/- [Rupees three thousand].

(Smt. Vibha Kankanwadi)
JUDGE

(Prasanna B. Varale)
JUDGE

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