

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 4452 OF 2018**

**Amit Deepak Waghmare
Vs.**

..Petitioner

The State of Maharashtra & Orsa

..Respondents

**Mrs. Harjeet Kaur Bhagwant Singh for the Petitioner
Mr. V. B. KondeDeshmukh Addl PP for the Respondent State**

**CORAM :R. M. SAVANT, &
N. J. JAMADAR, JJ
DATE : 3RD DECEMBER, 2018**

P.C.

1 The above Writ Petition has been filed challenging the order dated 12-6-2018 passed by the State Government and communicated by the Under Secretary, Home Department, Government of Maharashtra. By the said order the Appeal filed by the Petitioner came to be dismissed. The said Appeal was filed against the order dated 29-1-2018 passed by the Divisional Commissioner, Pune Division, Pune, by which order the application of the Petitioner for parole on the ground of his wife's illness, came to be rejected. The said rejection is interalia on the ground that the Petitioner on the earlier occasion i.e. in the years 2008, 2009 and 2014 had returned late by 34 days, 1069 days and 60 days respectively, in the said years. The Divisional Commissioner, Pune Division Pune, held that the Petitioner's application would have to be rejected on the touchstone of Rule 4(10) of the Notification dated 16-4-2018.

2 Aggrieved by the said order the Petitioner carried the matter by way of an Appeal to the State Government. As indicated above the State Government by the impugned order dated 12-6-2018 dismissed the Appeal. The Appellate Authority also referred to the late return of the Petitioner after parole / furlough leave as also relied upon Rule 4(10) of the Notification dated 16-4-2018. The Appellate Authority has also adverted to the fact that the medical certificates in respect of the Petitioner's wife are about 10 months old and therefore the latest medical condition of the Petitioner's wife has not been brought on record. As indicated above it is the said order dated 12-6-2018 which is taken exception to by way of the above Petition.

3 It was the submission of the Learned Counsel for the Petitioner that the First Authority as well as the Appellate Authority have erred in relying upon the factum of the Petitioner's late return after his earlier release on parole / furlough. It was the submission of the Learned Counsel that the said fact was considered by Division Bench of this Court whilst dealing with Writ Petition No.958 of 2018 which Petition was filed by the Petitioner when his application for furlough leave came to be rejected. It was also the submission of the Learned Counsel that the Petitioner has annexed to the Petition the medical certificate dated 21-7-2018 of Dr. Avinash A. Kognole, Anish Multispeciality Hospital Kurndwad, District Sangli.

4 Per contra the Learned Additional PP Mr. KondeDeshmukh would support the impugned order and would contend that it is on account of the late return of the Petitioner from earlier parole / furlough leave that the application of the Petitioner came to be rejected. The Learned Addl PP would submit that the medical certificate produced by the Petitioner before the authorities was of an anterior point of time and it is in the said circumstances that the application was required to be rejected.

5 We have heard the Learned Counsel for the Petitioner and the Learned Additional PP. We have also gone through the exhibits which are annexed to the above Writ Petition. In so far as the late return of the Petitioner on the earlier occasions i.e. 34 days, 1069 days and 60 days in the years 2008, 2009 and 2014 respectively is concerned, the said fact was considered by the Division Bench whilst dealing with the Writ Petition No.958 of 2018 in paragraph 2 of the said order dated 21-3-2018. The Division Bench has referred to the fact that the Petitioner in the year 2016 had returned back to jail without the police being required to arrest him. The Division Bench has therefore observed in the said paragraph 2 that it is on all occasions the Petitioner had surrendered back to the prison on his own. And it is not on a single occasion the Petitioner was arrested by the police and brought back to the prison. In our view therefore, the past conduct of the

Petitioner returning late to prison after parole / furlough leave cannot come in the way of the Petitioner. In so far as his entitlement for the instant parole leave is concerned, the medical certificates no doubt are of the year 2017 except one certificate which is dated 21-7-2018. The said certificate discloses that the Petitioner's wife is suffering from Dysfunctional Uterine bleeding and requires surgical intervention. It seems that on the earlier occasion when the Petitioner was released on parole / furlough the Petitioner could not take steps to treat his wife on account of the death of his uncle who is a co-prisoner with him in the said jail. It is stated that in ground (E) of the Petition at page (6) that since the Petitioner had to complete all the rights and rituals as there was no other male member and all are co-accused in jail that the Petitioner could not take steps for the treatment of his wife.

6 In our view, the said explanation seems to a plausible reason for the Petitioner not being able to treat his wife when he was earlier released on furlough. For the reasons aforesaid, the above Petition is required to be allowed and is accordingly allowed. The impugned order dated 12-6-2018 would stand quashed and set aside. Consequently the order dated 29-1-2018 would also stand quashed and set aside. The Petitioner would be released on parole leave for a period of 4 weeks which period would commence from the date of his release. The Petitioner would be released latest by 5-12-2018. The Petitioner would return back after his parole period comes to an end. Whilst

on parole the Petitioner to report to the Miraj City Police Station on every alternate day.

7 The above Petition is allowed to the aforesaid extent and is disposed of.

[N. J. JAMADAR, J]

[R.M.SAVANT, J]