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IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO. 80/2018

(Sardar Khan s/o Amir Ullah Khan vs. The Superintendent, Central Prison, Nagpur and another)

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

Court's or Judge's order

Mr. A.S. Band , Advocate for the petitioner

Mrs. N.R. Tripathi, Additional Public Prosecutor for respondents

CORAM : SMT. VASANTI A. NAIK &
MRS. SWAPNA JOSHI, JJ.

DATED : 14th March, 2018.

Heard.

By this Criminal Writ Petition, the petitioner challenges the order of the Deputy Inspector General of Prisons, Nagpur, dated 18.12.2017, rejecting the application of the petitioner for furlough leave. Though the police report is favourable to the petitioner, the furlough leave application of the petitioner was rejected as the appeal filed by the petitioner against the judgment of his conviction is pending; and in 2014 when he was released on furlough leave, he returned 444 days late, after the due date.

The learned counsel for the petitioner states that an opportunity may be granted to the petitioner to mend his ways. It is stated that if the petitioner is released on furlough leave on this occasion, the petitioner would

surrender on the due date.

Since the petitioner undertakes to surrender on the due date, it would be necessary to quash and set aside the impugned order and grant an opportunity to the petitioner to mend his ways. The furlough leave of the petitioner cannot be rejected on the ground that the appeal filed by the petitioner against the judgment of his conviction is pending. Rule 4 (11) of the Prisons (Bombay Furlough and Parole) Rules 1959 is challenged in more than a couple of writ petitions and this Court after observing that the rule *prima facie* appears to be arbitrary and unreasonable, granted furlough to the petitioners in the said cases.

Hence, for the reasons aforesaid, the Criminal Writ Petition is allowed. The impugned order is quashed and set aside. The respondents are directed to release the petitioner on furlough leave within seven days from the date on which the relatives of the petitioner furnishes the surety, as is required by Rule 6 of the Rules of 1959. Order accordingly.

JUDGE

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