

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

CRIMINAL WRIT PETITION NO. 108/2018

(AKASH JAYKUMAR SAROJKAR (IN JAIL) **VERSUS** THE STATE OF MAHARASHTRA, THR. DIG OF
 PRISON (E) (R), NAGPUR & 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.
 Shri K.L. Dharmadhikari, A.P.P. for the R-1 & 2.

CORAM : SMT. VASANTI A NAIK AND
A.D. UPADHYE, JJ.

DATE : FEBRUARY 13, 2018.

By this writ petition, the petitioner has challenged the order of the D.I.G. Prisons, Nagpur, dated 19.01.2018⁹ rejecting the application made by the petitioner for grant of furlough leave.

The petitioner had applied for furlough leave but the application of the petitioner was rejected by the D.I.G. Prisons by observing that though the father of the petitioner was ready to furnish surety for the release of the petitioner, he could not have exercised control over him. It appears that the furlough leave of the petitioner was rejected as after his arrest, he had absconded from Police Station Jaripatka.

The learned counsel for the petitioner submitted that the petitioner has sought for furlough leave for the first time after he has undergone the sentence of imprisonment for more than three years. It is stated that the apprehension expressed by the D.I.G. Prisons that the petitioner would abscond if he is released on furlough leave is not well founded as this is the first time that the petitioner has applied for furlough leave. It is stated that merely because the father of the petitioner is a driver, it cannot be said that he would not be able to exercise control over the petitioner.

Shri Dharmadhikari, the learned Additional Public Prosecutor appearing for the respondents has supported the order. The learned Additional Public Prosecutor has referred to the affidavit-in-reply of the respondent no.2 to state that the father of the petitioner would not be able to exercise control over him as he is a driver. It is stated that since the petitioner had escaped from the lawful custody from Police Station Jaripatka when he was arrested after the offence was registered against him, the D.I.G. Prisons had decided not to grant furlough leave to the petitioner.

We do not find any propriety in the action of the D.I.G. Prisons in rejecting the furlough leave application of the petitioner when the petitioner has applied for the same for the first time after undergoing the sentence of imprisonment for a period of more than three years. If there was a history of the petitioner absconding after the expiry of the parole or furlough leave, the D.I.G. Prisons could have expressed an apprehension that the petitioner would abscond. However, since the petitioner has applied for furlough leave for the first time, there is no reason for the D.I.G. Prisons to apprehend that the petitioner would abscond. Also, it cannot be said that merely because the father of the petitioner is working as a driver, he would not be able to exercise control over the petitioner after furnishing surety for his release. Since there is no merit in both the reasons recorded by the D.I.G. Prisons for rejecting the prayer of the petitioner for grant of furlough leave, the impugned order is liable to be quashed and set aside.

Hence, for the reasons aforesaid, the 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 petitioner furnishes surety as is required by Rule 6 of the Prisons (Bombay Furlough and Parole) Rules, 1959.

Order accordingly.

JUDGE

JUDGE

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