

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

CRIMINAL WRIT PETITION NO.121 OF 2018

[Vilas Maroti Kinake .vs. Dy. Inspector General (Prisons), Nagpur and one]

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

Court's or Judge's orders

Shri G.S. Agrawal, Counsel (Appointed) for the petitioner,
Mrs. Tripathi, APP for the respondents-State.

.....

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

DATED : APRIL 20, 2018.

Heard.

By this criminal writ petition the petitioner challenges the order of the DIG Prisons, Nagpur dated 21.11.2017 rejecting the application of the petitioner for furlough leave.

The furlough leave application of the petitioner is rejected on two grounds. According to the DIG Prisons, the appeal filed by the petitioner against the judgment of his conviction is pending and hence he would not be entitled to furlough leave in view of Rule 4 (11) of the Prisons (Bombay Furlough and Parole) Rules, 1959. The furlough leave application is rejected as the petitioner had surrendered belatedly by two days in the year 2015 when he was released on furlough leave.

We do not find any propriety in the rejection of the furlough leave application of the petitioner on both the grounds. Merely because an appeal filed by the prisoner is pending, furlough leave cannot be denied to him. Rule 4 (11) of the Rules is challenged in a number of criminal writ petitions and in those petitions, this court has directed the release of the petitioners in those cases on furlough after prima facie holding that the provisions of Rule 4 (11) of the Rules are arbitrary and unreasonable. Also, merely because the petitioner had

surrendered belatedly by two days, the furlough leave application cannot be refused, more so when the petitioner has applied again for grant of furlough leave after nearly three years.

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 his relative furnishes the surety as is required under Rule 6 of the Prisons (Bombay Furlough and Parole) Rules, 1959. Order accordingly.

JUDGE

Gulande

JUDGE