

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

CRIMINAL WRIT PETITION NO.142/2018

Ayyaj Kha Ajjad Kha

...Versus...

Deputy Inspector General of Prison, Eastern Region, Nagpur and another

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

Court's or Judge's orders

Ms. D.V. Sapkal, Counsel (appointed) for petitioner
Shri B.M. Lonare, APP for respondents

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

DATE : 14/02/2018

By this writ petition, the petitioner challenges the order of the Deputy Inspector General of Prisons dated 4/12/2017 rejecting the application of the petitioner for furlough leave.

The learned Counsel for the petitioner states that the furlough leave application of the petitioner is rejected solely on the ground that the appeal filed by him against the order of his conviction for the offences punishable under Sections 302 and 324 of the Penal Code is pending in the High Court. It is submitted that Rule 4 (11) of the Prisons (Bombay Furlough and Parole) Rules, 1959 is challenged before this Court in more than a couple of writ petitions and after *prima facie* finding that the rule is arbitrary this Court has granted furlough leave to the petitioners in those cases.

We do not find any propriety in the action on the part of the Deputy Inspector General of Prisons in rejecting the furlough leave application on the ground that the appeal filed by the petitioner against his conviction is pending. When an appeal filed by the convict is pending and he is not released on bail, then he would be required to secure parole or furlough leave. Rule 4 (11) of the Rules is challenged in more than a couple of writ petitions and after *prima facie* finding that the rule is bad in law, we have granted furlough leave to several convicts. On parity, it would be necessary to grant similar relief to the petitioner also.

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 within one week from the date on which the petitioner furnishes the surety, as is required by Rule 6 of the Rules.

Order accordingly. No costs.

The professional fees of the learned Counsel for the petitioner (appointed by the Legal Aid Sub-Committee) should be paid at the earliest.

JUDGE

JUDGE