

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

CRIMINAL WRIT PETITION NO.144 OF 2018

[Rajhansa Baburao Choudhari .vs. The Divisional Commissioner, Nagpur Division, 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

Ms. S.B. Khobragade, counsel for the petitioner,
Shri B.M. Lonare, APP for the respondent.

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

DATED : MARCH 13, 2018.

By this writ petition, the petitioner challenges the order of the Divisional Commissioner, dated 14.11.2017, rejecting the application of the petitioner for grant of parole leave.

Though the police report is favourable to the petitioner, the parole leave application of the petitioner is rejected by placing reliance on Rule 4 (11) of the Prisons (Bombay Furlough and Parole) Rules, 1959 as the appeal filed by the petitioner against the order of his conviction and sentence is pending before the High Court.

Rule 4 (11) of the Rules is challenged before this Court in more than a couple of writ petitions and this Court has, after *prima facie* finding that the rule is arbitrary and unreasonable, granted parole leave to the petitioners in the said writ petitions. Merely because the appeal filed by a prisoner against the judgment of his conviction is pending, parole leave application of the prisoner cannot be rejected. The petitioner's house is in a dilapidated condition and the said fact could be gathered from the police report that is favourable to the petitioner.

Hence, for the reasons aforesaid, the Criminal Writ Petition is allowed. The impugned order is quashed and set aside. The Divisional Commissioner is directed to release the petitioner on parole leave on furnishing of surety according to the rules. Order accordingly.

JUDGE

JUDGE

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