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IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CRIMINAL WRIT PETITION NO. 176/2018

(Ankush s/o Ramchandra Satpute **vs.** The State of Maharashtra and others)

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

Court's or Judge's order

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 Mrs. P.T. Joshi, Advocate (appointed) for the petitioner
 Ms. N.R.Tripathi, Additional Public Prosecutor for respondents

CORAM : SMT. VASANTI A. NAIK &
MRS. SWAPNA JOSHI, JJ.
DATED : 10th April, 2018.

Heard.

By this Writ Petition, the petitioner challenges the order of the Deputy Inspector General of Prisons, Nagpur, dated 25.07.2017, rejecting the application of the petitioner for furlough leave.

The furlough leave application of the petitioner was rejected as the petitioner had surrendered belatedly in the years 2015 and 2016, when he was released on furlough leave. The application of the petitioner is also rejected as the appeal filed by the petitioner against the judgment of his conviction and sentence is pending in the High Court.

We are not impressed with the reasons recorded by the Deputy Inspector General of Prisons for rejecting the furlough leave application of the petitioner. Rule 4 (11) of

the Prisons (Bombay Furlough and Parole) Rules, 1959 is challenged in a number of writ petitions and this Court has *prima facie*, found that the rule is arbitrary and unreasonable. Merely because the appeal filed by the prisoner is pending in the Court, the furlough leave application of the prisoner cannot be rejected. We also do not find any propriety in the action on the part of the Deputy Inspector General of Prisons in rejecting the furlough leave application of the petitioner as he had surrendered belatedly when he was released on furlough leave on earlier occasions. It appears from the impugned order that in the year 2015, the petitioner was late in surrendering by 29 days and when he was released in the next year i.e. in 2016, he had surrendered late by only one day. It appears that the petitioner has tried to mend his ways. In the circumstances of the case an opportunity needs to be granted to the petitioner to point out to the respondents that he could surrender to the prison on the due date.

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 relative of the petitioner furnishes surety as is required by Rule 6 of the Rules, 1959. Order accordingly.

JUDGE

JUDGE