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IN THE COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
CRIMINAL WRIT PETITION NO. 187/2018

(Lalit Rameshji Prabhawat vs. Divisional Commissioner, Nagpur and another)

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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 Ms. S.B.Khobragade, Advocate for petitioner
 Mr. Nandita Tripathi, Addl. Public Prosecutor for respondents

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

DATED :26th February, 2018.

Heard.

By this Writ Petition, the petitioner challenges the order of the Divisional Commissioner, Nagpur, dated 3rd February, 2018 rejecting the application for parole leave.

The parole leave application of the petitioner is rejected by the Divisional Commissioner solely on the ground that the appeal filed by the petitioner against the judgment of his conviction is pending. The application of the petitioner appears to have been rejected solely by relying on Rule 4 (11) of the Prisons (Bombay Furlough and Parole) Rules, 1959 which provides that when an appeal against the conviction is pending and the application for bail is rejected, the prisoner would not be entitled to furlough leave.

We are inclined to quash and set aside the impugned order passed by the Divisional Commissioner. Rule 4 (11) of the

Rules, is challenged in more than a couple of writ petitions and we have *prima facie* observed that the provisions of Rule 4 (11) (amended) are arbitrary and unreasonable. Only when a prisoner's appeal is pending and he is not released on bail, that he would be required to file an application for furlough or parole leave.

Hence, for the reasons aforesaid, the Writ Petition is allowed. The impugned order is quashed and set aside. As we have granted parole in several similar cases, on parity, we direct the respondents to release the petitioner on parole leave within seven days from the date on which the petitioner furnishes surety, as is required under Rule 6 of the Prisons (Bombay Furlough & Parole) Rules, 1959.

Order accordingly.

JUDGE

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