

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

CRIMINAL WRIT PETITION NO.237 OF 2018

[Suresh Sadhuji Ghogare .vs. State of Maharashtra 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.D. Wankhede, counsel for petitioner,
Ms. Nandita Tripathi, APP for respondents.

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

DATED : MARCH 08, 2018.

By this writ petition, the petitioner challenges the order of the DIG Prisons, Nagpur dated 11.2.2018 rejecting the application of the petitioner for grant of furlough leave.

The furlough leave application of the petitioner is rejected on two grounds. Firstly, according to the DIG Prisons, the house of the victim is near the house where the petitioner wishes to reside while on furlough leave and the elder brother of the victim has objected to the release of the petitioner on the ground that some untoward incident may happen. Secondly, the furlough leave application is rejected on the ground that the appeal filed by the petitioner against the judgment of his conviction is pending.

It appears that this is the first time that the petitioner has sought for furlough leave. Merely because the family members of the victim have objected for the release of the petitioner on furlough leave, the furlough leave application of the petitioner cannot be rejected. It would be necessary to grant furlough leave to consider the conduct of the petitioner after he is released on

furlough. Also, merely because an appeal filed by a prisoner is pending cannot be a ground for rejection of the furlough leave. Rule 4 (11) of the Prisons (Bombay Furlough and Parole) Rules, 1959 is challenged in this Court in more than a couple of writ petitions and this Court has *prima facie* found that the rule is arbitrary and unreasonable. In the circumstances of the case, the furlough leave application of the petitioner needs to be granted.

Hence, for the reasons aforesaid, the writ petition is allowed. The impugned order is quashed and set aside. The petitioner should be released on furlough leave within seven days from the date on which the relative of the petitioner furnishes the surety as is required by Rule 6 of the Rules. Order accordingly.

JUDGE

JUDGE

Gulande