

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

CRIMINAL WRIT PETITION NO.240 OF 2018

[Rajhansa Baburao Choudhari .vs. Deputy General Inspector of Prison, 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 (appointed) for the petitioner,
Ms Tripathi, APP for the respondents.

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

DATED : APRIL 09, 2018.

Heard.

By this criminal writ petition the petitioner challenges the order of the D.I.G. Prisons, Nagpur dated 3.2.2018 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 respondents, Shri Pandhari Narule, who is ready to furnish surety for the release of the petitioner is 65 years old and due to his old age he would not be in a position to control the petitioner. Secondly, according to the respondents, the petitioner cannot be released on furlough leave as the appeal filed by him against the judgment of his conviction is pending in the High Court.

We do not find any propriety in both the reasons recorded by the D.I.G. Prisons for rejecting the furlough leave application of the petitioner. Merely because the appeal filed by the petitioner against his conviction is pending, furlough leave cannot be denied to the petitioner. Rule 4 (11) of the Prisons (Bombay Furlough and Parole) Rules, 1959 is challenged before us in several writ petitions and after *prima facie* finding that the rule is arbitrary and unreasonable, we have permitted the release of those prisoners on furlough leave. Also the furlough leave

application could not have been rejected on the ground that Shri Pandhari Narule being aged 65 years would not be able to control the petitioner. It cannot be said that a person aged 65 years is old would not be able to keep control over the petitioner. Both the reasons recorded by the DIG Prisons for rejecting the furlough leave application cannot be upheld.

Hence, for the reasons aforesaid, the criminal writ petition is allowed. The impugned order is quashed and set aside. The respondents are directed to release the petitioner on furlough within seven days from the date on which the relative of the petitioner furnishes the surety, as is required by Rule 6 of the Prisons (Bombay Furlough and Parole) Rules, 1959. Order accordingly.

JUDGE

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