

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.927 OF 2018**

Navnath S/o Datttrya Waghmare  
Age : Major, Occ : Nil,  
R/o Diksal, Tq. Karjat,  
Dist. Ahmednagar  
At present Visapur Open Prison,  
Dist. Ahmednagar.

**PETITIONER**

**VERSUS**

1. The State of Maharashtra,
2. The Deputy Superintendent  
of Open Prison, Visapur,  
Dist. Ahmednagar.
3. The Deputy Inspector General  
of Police (Prison), Western Region,  
Yerwad, Pune.

**RESPONDENTS**

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Ms.S.P. Chate, Advocate for the Petitioner  
(appointed)  
Mr.K.B. Jadhavar, APP for the  
Respondent/State

...

**CORAM: S.S.SHINDE &  
K.K. SONAWANE, JJ.**

Reserved on : 14.12.2018  
Pronounced on : 08.01.2019

**JUDGMENT:** (Per S.S.Shinde, J.):

1. Rule. Rule made returnable forthwith

and heard finally with the consent of learned counsel appearing for the parties.

2. This Petition is filed by the petitioner seeking directions to Respondent Nos.2 and 3 to refund him the surety amount of Rs.5,000/-, which has been forfeited on account of overstay of petitioner beyond the period of furlough sanctioned to the petitioner.

3. It is the case of the petitioner that, he is convicted and sentenced by the Sessions Court at Ahmednagar for the offence punishable under section 302 of the Indian Penal Code, and at present is undergoing sentence at Visapur Open District Prison.

4. It is the case of the petitioner that, he has applied for furlough leave to Respondent No.2 on 3<sup>rd</sup> February, 2014.

Respondent No.2 had considered the application of the petitioner, and by order dated 14<sup>th</sup> October, 2014 granted him furlough leave for two weeks, on furnishing cash surety of Rs.5,000/-. After completing the requisite formalities, the petitioner came to be released from Visapur Open District Prison on 14<sup>th</sup> November, 2014, for a period of 14 days. Thereafter, the petitioner has applied for extension of furlough leave for a period of 14 days. Respondent No.3 granted extension of 14 days furlough leave to the petitioner. Thus the petitioner was required to surrender back in prison on 12<sup>th</sup> December, 2014.

5. It is the case of the petitioner that, his son was suffering from serious illness, therefore, he could not surrender on 12<sup>th</sup> December, 2014, and he surrendered to the Jail Authorities late by one day i.e. on

13<sup>th</sup> December, 2014. Due to late surrender by one day, the Prison Authority issued show-cause notice to the petitioner on 27<sup>th</sup> June, 2016, to which the petitioner submitted his reply, stating that due to illness of his son, he could not surrender before the Jail Authority within time i.e. on 12<sup>th</sup> December, 2014, and surrendered on 13<sup>th</sup> December, 2014.

6. It is the case of the petitioner that, the Superintendent of Yerwada Central Prison, Pune proposed a punishment against the petitioner and sent the proposal to Respondent No.2. Respondent No.2, after considering the said proposal, proposed the order of giving strict warning to the petitioner, subject to appraisal of Sessions Court at Pune. Thereafter, Sessions Court at Pune granted appraisal and directed the authorities to issue strict warning to the

petitioner for surrendering late. It is the case of the petitioner that Respondent No.2 has passed the impugned order thereby issuing strict warning to the petitioner and in addition to it, as per the provisions of Rule 10 of the Prison (Bombay Furlough and Parole) Rules, 1959 (Hereinafter referred to as "the Prison Rules of 1959) forfeited the amount of surety of Rs.5,000/-. Hence this Writ Petition.

7. Learned counsel appearing for the petitioner submits that, when the petitioner granted furlough leave, and further extension, he was required to surrender the Jail Authorities on 12<sup>th</sup> December, 2014. However, the son of the petitioner was suffering from serious illness and hence the petitioner could not surrender Jail Authorities within time, and he has

surrendered late by one day i.e. on 13<sup>th</sup> December, 2014. It is submitted that, the petitioner has also submitted his reply to the show-cause notice stating therein that, due to illness of the son of the petitioner, he could not surrender within time to the Jail Authorities and surrendered by one day late. However without considering the said reply, the cash surety amount of Rs.5,000/- has been erroneously forfeited by the Respondent Authorities. Therefore, the order of forfeiture of cash surety amount of Rs.5,000/- by the Respondent is erroneous and deserves to be quashed and set aside.

8. It is submitted that, there was no willful or deliberate breach on the part of the petitioner in reporting back to the Jail Authority, after availing of furlough, however due to unavoidable circumstances, the

petitioner has reported late by only one day. It is submitted that earlier on four occasions, when the petitioner was released on furlough leave, he reported back promptly on the scheduled date. The said aspect has not been considered by the Respondent Authorities, while passing the impugned order of forfeiture of surety amount of Rs.5,000/-. Therefore, learned counsel appearing for the petitioner submitted that the Petition may be allowed.

9. On the other hand, learned A.P.P. appearing for the respondent-State, relying upon the reply filed on behalf of the respondent, submits that the petitioner has given an undertaking of surety when he was released on furlough leave that, in case of failure to surrender with the authorities within prescribed period, his amount of

surety would be forfeited. The petitioner did not surrender within the prescribed period, and surrender late by one day, therefore, the impugned order rightly came to be passed by the Respondent Authorities. It is submitted that the impugned order is legal and valid as the petitioner has violated the terms and conditions of the undertaking and surrendered late by one day to the Jail Authorities. Therefore, learned A.P.P. submits that, the Petition may be rejected.

10. We have given careful consideration to the submissions of learned counsel appearing for the petitioner and learned A.P.P. appearing for the respondent- State. With their able assistance, we have perused the grounds taken in the Petition, annexures thereto, and the reply filed by the respondents.

11. It is true that the petitioner when released on furlough leave, has overstayed by one day and surrendered late thereby violating the terms and conditions of undertaking given by him to the Respondent Authorities. Accordingly the Respondent Authorities passed the order of issuing Strict Warning to the petitioner after receiving judicial appraisal from the Sessions Court at Pune. In addition to this the surety amount of Rs.5,000/- deposited by the petitioner has been forfeited. The petitioner's request to the respondents to recall the said order of forfeiture of surety amount was not favourably considered. So also the Respondents carried impression that, the petitioner intentionally breached the conditions laid down in the order, and accordingly, as per the Prison Rules, 1959,

the surety amount of Rs.5,000/- was confiscated/forfeited.

12. Upon careful perusal of the explanation given by the petitioner, it appears that the son of the petitioner was suffering from serious illness and there was nobody to look after him. Accordingly, on 12<sup>th</sup> December, 2014, the petitioner could not surrender to the Jail authorities and has surrendered on the next day i.e. on 13<sup>th</sup> December, 2014.

13. As observed earlier, the petitioner was required to surrender the Jail Authority on 12<sup>th</sup> December, 2014, however, due to unavoidable circumstances, he surrendered on 13<sup>th</sup> December, 2014 i.e. late by one day. Due to late surrender, the Respondent Authorities have punished him thereby issuing strict

warning to him after receiving judicial appraisal from the Sessions Court. However, the Respondent Authorities while confiscating/forfeiting the cash surety amount of Rs.5,000/- have not considered the poor financial condition of the petitioner as argued by learned counsel appearing for the petitioner. Therefore, in peculiar facts and circumstances of this case, the impugned order to the extent of forfeiting the whole amount of Rs.5,000/- is not proper. Hence, keeping in view the poor financial condition of the petitioner and on humanitarian ground, we are inclined to interfere in the impugned order to the extent of quantum of forfeiting/confiscating the cash surety amount of Rs.5,000/-, thereby reducing the quantum of forfeited amount to the extent of Rs.1000/-. Hence we pass the following order:-

**ORDER**

i) The order passed by the Respondent Authority, issuing a strict warning to the petitioner, is maintained.

ii) The order of forfeiture of cash surety amount of Rs.5,000/- deposited by the petitioner is modified and quantum of such forfeiture of surety amount is reduced to Rs.1,000/- instead of Rs.5,000/- as ordered by the concerned authority.

iii) Remaining surety amount of Rs.4,000/- forfeited by the Respondent Authorities by the impugned order, be refunded to the petitioner within 4 weeks from today after following relevant procedure and formalities.

iv) With the above observations the

Petition stands disposed of.

v) Rule made absolute accordingly.

vi) The petitioner be communicated this order through jail authority.

14. Since Mrs. S.P. Chate, learned counsel is appointed to prosecute the cause of the petitioner, her fees be paid as per the schedule of fees maintained by the High Court Legal Services Sub-Committee, Aurangabad.

**(K.K.SONAWANE)**  
**JUDGE**

**(S.S.SHINDE)**  
**JUDGE**

SGA