

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 5170 OF 2018**

Rajesh Aglesh Raman,
Aged : 30 years, residing at
Subhasgar Nagar, Plot No.12,
Near Balai Super Market,
Bibwewadi, Pune-411 046,
and at presently lodged at
Kolhapur Central Prison,
Kalamba as a Prisoner No. C-5576

.....Petitioner

Vs.

1 The State of Maharashtra
Through the Office of Public
Prosecutor, High Court, Bombay.

2 The DIG Prisons,
Western Zone, Pune-411 006.

3 The Jail Superintendent,
Kolhapur Central Prison,
Kalamba, Kolhapur.

4 The Senior Inspector,
Bibwewadi Police Station,
Pune.

.....Respondents.

Ms. Harjeet Kaur for the Petitioner.

Ms. P.P. Shinde APP for the Respondent-State.

**CORAM : A. S. OKA, AND
A. S. GADKARI, JJ.
DATE : 4th JANUARY, 2019.**

ORAL JUDGMENT (PER A.S. OKA, J.):

Rule. The Respondent waives service. Taken up for final hearing.

2 The Petitioner applied for grant of furlough under the provisions of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, "*The said Rules of 1959*").

3 The Order was made by the Competent Authority on 24th October, 2018 by which the Petitioner was ordered to be released on furlough leave for a period of 11 days. The Petitioner had prayed for grant of furlough leave for the period of 28 days and therefore, the Petitioner is before this Court by way of this Writ Petition.

4 Perusal of the impugned Order shows that the Competent Authority came to the conclusion that the Petitioner was entitled to furlough leave for the period of 28 days in the year 2018. However it was observed that in the year 2018, the Petitioner has already enjoyed furlough leave for a period of 17 days and therefore, the Petitioner was granted furlough leave for 11 days in the impugned Order.

5 On a query made by this Court, the learned APP on instructions, stated that the furlough leave of 17 days which was enjoyed by the Petitioner was the one which was granted to the

Petitioner under the Order dated 20th November 2017 passed by this Court in Criminal Writ Petition No. 4078 of 2017 filed by the Petitioner.

6 The learned APP submits that as per Note 3 appended to amended Rule 3-C (4) of the said Rules of 1959, the Petitioner ought to have availed of furlough leave on the basis of Order dated 24th October, 2018 in the year 2018 which he has not availed.

7 We have considered the submissions. As per sub-clause (4) of clause C of the Rule 3 of the said Rule of 1959 (as amended), there is no dispute that the Petitioner was entitled to furlough not exceeding 28 days in the year 2018.

8 We have perused the Order dated 20th November, 2017 in Criminal Writ Petition No. 4078 of 2017. Perusal of the Order shows that for the year 2016, the Petitioner was granted furlough by an Order dated 13th May, 2016. The grievance in the said Writ Petition was that though the furlough was granted, the Petitioner was not allowed to avail the same. Therefore, by the said Order, the Division Bench of this Court directed to release the Petitioner on furlough for a period of 28 days on the basis of Order dated 13th May, 2016. Even according to the case of the Respondent-State, the furlough enjoyed

by the Petitioner earlier in the year 2018 is on the basis of the Order dated 20th November, 2017 and that also for the year 2016.

9 The entitlement of the Petitioner under sub-clause (4) of clause C of the Rule 3 of the said Rule of 1959 (as amended) is of furlough not exceeding of 28 days. The furlough of 17 days enjoyed by the Petitioner in the year 2018 is not for the year 2018 but it is for the year 2016 as is clear from the Order of this Court dated 20th November, 2017. Therefore, there was no justification for confining the period of furlough to 11 days under the impugned Order.

10 Even if the Petitioner has not availed furlough on the basis of impugned Order within a period of two months, under Note 3 appended to sub-clause (4) of clause C of Rule 3 of the said Rules of 1959 (as amended), the sanctioning Authority has power to extend the same.

11 We find that the present Petition was filed in this Court on 19th November, 2018 before the expiry of period of 2 months from the date of the impugned Order. Therefore, this is a fit case where the validity of the impugned Order as modified as per this Order will have to be extended.

12 Accordingly, we pass the following order.

- a) We direct the second Respondent to modify the Order dated 24th October 2018. (Exhibit A to the Petition) by granting furlough for a period of 28 days, instead of 11 days;
- b) Considering the peculiar facts of the case, we direct the Second Respondent to exercise power of extending validity of the Order dated 24th October, 2018 by reasonable period to enable the Petitioner to avail the benefits under the said Order;
- c) We make it clear that even the Petitioner avails the benefit of furlough on the basis of this Order, the said benefit will be for the year 2018 and not for the year 2019;
- d) The rule is made absolute in the aforesaid terms.

(A.S. GADKARI, J.)

(A.S. OKA, J.)