

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

CRIMINAL WRIT PETITION NO.498 OF 2019  
(Dipak s/o Anil Awale vs. State of Maharashtra and another)

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Office Notes, Office Memoranda of  
Coram, appearances, Court's orders    Court's or Judge's orders  
or directions and Registrar's orders.

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Shri A.Y. Sharma, Advocate for petitioner.  
Smt. N.R. Tripathi, Additional Public Prosecutor for  
respondents.

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CORAM : P.N. DESHMUKH AND  
          PUSHPA V. GANEDIWALA, JJ.

DATED : AUGUST 5, 2019

This petition is preferred against the order dated 23/5/2019 passed by respondent no.1 rejecting application of petitioner for furlough leave.

Perusal of affidavit-in-reply of respondents reveals that one of the grounds put forth for rejection of application of petitioner for furlough leave is Lok Sabha elections. However, this ground now does not exist since such elections are already over. Another ground put forth is about pendency of trial against petitioner for the offence punishable under Section 364-A of Indian Penal Code. Thus, according to learned Additional Public Prosecutor, Rule 4(13) of the Prisons (Mumbai Furlough and Parole) Rules, 1959 does not entitle petitioner for release on furlough leave as offence punishable under Section 364-A of Indian Penal Code is registered against him and the case is pending on the file of 12<sup>th</sup> Additional Sessions Judge, Nagpur.

The petitioner is admittedly not imposed with any sentence for the offence punishable under Section 364-A of Indian Penal Code and thus, bar of sub-rule 13 of Rule 4 of the Prisons (Mumbai Furlough and Parole) Rules, 1959 is not attracted in the present case as his trial is pending and as such, there is no question of petitioner being sentenced for such offence. Another aspect which needs consideration is that for being eligible, petitioner has to complete three years of imprisonment as provided by Rule 3 of the said Rules. According to affidavit-in-reply of State, till filing of such reply on 18/7/2019, petitioner had undergone sentence for the period of 2 years 10 months and 23 days and, therefore, his claim was rejected on this count also.

In view of above facts and as we find that provisions of sub-rule (13) of Rule 4 of the said Rules are not attracted, petitioner is entitled to be released on furlough leave for 21 days as per Rules, subject to Authorities considering fact of completion of three years of imprisonment by him till date.

The petition is disposed of in the above terms.

JUDGE

JUDGE

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