

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

CRIMINAL WRIT PETITION NO. 979 OF 2018.

(Baban Kisan Thorat, at present detained in Central Prison, Amravati having Prisoner No. C – 111 Vs. Dy. Inspector General (Prisons), East Division, Nagpur & Anr.)

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

Court's or Judge's orders.

Shri G.S.Agrawal, Advocate (appointed) for petitioner.
Mrs. N.R.Tripathi, APP for respondents/State.

**CORAM : P.N. DESHMUKH &
PUSHPA V. GANEDIWALA, JJ.
AUGUST 06 2019.**

Heard.

The petitioner – a life convict for the offence punishable under Section 302 read with Section 34 of the Ind Penal Code has approached this Court for grant of furlough leave of 28 days, as his application for furlough leave was rejected by respondent no.1 vide impugned order dated 09/03/2018 on the ground of his previous conduct of overstay each time when he was released on furlough or parole leave.

We have perused the petition, affidavit-in-reply filed by respondent no.2/State and the documents annexed with the petition.

As per the affidavit-in-reply, when the petitioner was released on parole leave on 27/12/1997, he overstayed for about 5280 days and surrendered on 16/08/2012. Since then till date, the petitioner is continuously in jail.

As per Notification No.MIS-1316/C.R.669/16/PRS-3, dated 16/04/2018, Rule 1(A) is inserted in the Prisons (Bombay Furlough and Parole) Rules, 1959 thereby added objectives for grant of furlough and parole leaves. The said objectives of releasing a prisoner on leave are:-

- “(a) To enable the inmate to maintain continuity with his family life and deal with family matters,*
- (b) To save him from evil effects of continuous prison life,*
- (c) To enable him to maintain and develop his self-confidence,*
- (d) To enable him to develop constructive hope and active interest in life.”*

In the instant case, the petitioner, undisputedly is continuously in prison since seven years without any furlough or parole leave. One of the objectives to grant furlough leave is to save him from evil effects of continuous prison life. Though, the period of his outstay is a huge period, the respondent no.1 cannot also shirk his responsibility for not arresting him over such a long period.

The Division Bench of this Court in the case of ***Samadhan Waman Manwar Vs. Dy.Inspector General (Prisons), East Division, Nagpur & Anr.*** [Criminal Writ Petition No. 868/2016 dated

15/03/2017] has held that merely because an accused was required to be arrested cannot be a sole ground for rejection of his application for grant of furlough.

In the instant case, as the petitioner is continuously in jail for around seven years, in our opinion, in view of the aforestated objectives, the petitioner is required to be released on furlough leave on such terms and conditions as may be found suitable to respondent no.1, in addition to marking his presence everyday during the leave period to the concerned police station where the petitioner proposes to stay. Hence we pass the following order:-

ORDER

1. Criminal Writ Petition is allowed.
2. The impugned order dated 09/03/2018 passed by respondent no.1 – Deputy Inspector General (Prisons), East Division, Nagpur is hereby quashed and set-aside. The petitioner is entitled for furlough leave for 28 days on such terms and conditions as the Authority shall deem fit.
3. The petitioner will not be entitled for furlough leave for next two years, if he surrenders late or commits any offence when he is on furlough leave.
4. The petitioner shall mark his presence everyday during the leave period to the local Police Station where the petitioner proposes to stay.
5. The fees of the learned Advocate appointed

for the petitioner are quantified at Rs.1,500/- (One thousand five hundred only).

JUDGE

JUDGE

Sumit