

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

952. CRIMINAL WRIT PETITION NO. 478 OF 2020

Santosh S/o Sahebrao Nagargoje,
age major, convict undergoing life sentence –
Convict No. 8721, presently in Central Prison,
Aurangabad Dist. Aurangabad. ...Petitioner

Versus

1. The State of Maharashtra
Through : The Home Department,
Maharashtra State, Mantralaya, Mumbai.
2. The Divisional Commissioner,
Aurangabad
3. The Director General of Police & Inspector General,
District Pune ... Respondents

Mr. Dhananjaya Shinde, Advocate for petitioner (appointed)
Mr. K.S. Patil, Addl. Public Prosecutor for all respondents/State

CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.

DATE : 11th August, 2020

ORAL JUDGMENT (PER : T.V. NALAWADE, J.)

1. Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.
2. Present petition is filed to challenge the order passed by
the respondents by which furlough leave is refused to the petitioner.

Furlough leave is refused on the grounds like in the past, on many occasions, in the year 2005, 2006, 2009 and 2013 when he was granted the furlough leave, he did not turn up to the jail in time and he turned late. On one occasion he was late by 158 days, on other occasion he was late by 167 days, on the third occasion he was late by 288 days and on the last occasion he was late by 572 days. The submissions made and the record show that on the last occasion he returned to jail in the year 2014 and since that date no furlough leave is granted to him.

3. The aforesaid point, the point as to whether on the ground that he turned up to jail late in the past after getting furlough or parole leave, he can be refused the furlough leave, is considered in *Writ Petition No. 1535 of 2019 (Satish Shankarrao Shinde Vs. State of Maharashtra and others)* decided with *Writ Petition No. 1707 of 2019 on 26th November 2019*. This Court has considered all the provisions including the Rules made under the Furlough and Parole Rules and this Court has laid down that only on this ground, furlough leave cannot be refused to the prisoner. Exhausting reasons are given for the same. Considering the purpose behind the leave, this Court has held that at-least after some period opportunity needs to be given to prisoner to show that he has improved himself and he needs to be allowed to go to the society to

enable himself to mix in the society. This approach is to be used only when the prisoner has shown habit of returning to late jail and this approach need not be used when prisoner comes late by few days and if explanation is accepted by the authority.

4. Even in case of request under the Peoples Act, period of six years is given against the convict and after that period, a convict can be allowed to contest the election. Thus, in such cases, authorities need to consider and need to give some period and that would be six years and after that the authority can be allowed to have a presumption that one more opportunity needs to be given to a prisoner to show that he has improved himself and he will return back to jail in time. In the past, if he had turned up to the jail late, that period is not considered in his favour and he is required to undergo sentence in respect of that period. Further there is cutting of the remission period due to such conduct of the prisoner and he is also required to face criminal cases for such conduct. In view of these circumstances, this Court holds that the State needs to come out with liberal scheme when furlough is sought by the petitioner after a period like of six years in cases like present one, after which request can be again considered for granting furlough leave. As there is no prohibitory rule at present, this Court is hereby allowing the petition and passing the following order.

O R D E R

- I. The petition is allowed. The order of rejection of the furlough leave application is hereby quashed and set aside.
- II. The matter is remanded back for fresh consideration. The matter is to be again considered on the basis of record and the application is to be decided after considering the observations made by this Court in the present matter and the decision in ***Writ Petition No. 1535/2019 with Writ Petition No. 1707/2019 dated 26th November 2019***, cited supra. The application is to be decided by the authority within 15 days from today.
- III. Rule is made absolute in those terms.
- IV. The fees of the appointed Counsel is quantified @ Rs.4000/- (Rs. Four thousand only), which is to be paid through the High Court Legal Services Sub-Committee.
- V. Authenticated copies of this order and the decision in Writ Petition No. 1535/2019 with Writ Petition No. 1707/2019 are to be supplied to the learned Addl. Public Prosecutor. Copy is to be sent to the Home Department of the State Government for consideration.

(M.G. SEWLIKAR)
JUDGE

(T.V. NALAWADE)
JUDGE