

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

CRIMINAL WRIT PETITION NO.378/2020

PETITIONER : Deepak @ Kilchi S/o Suresh Shende
IN JAIL Aged about 34 years,
R/o Drugdhamana, Near Saitaj
Polytechnic College, Davalmethi, 8th Miles,
Wadi, Tq. And Dist. Nagpur
(C/564, Open Prison Morshi).

...VERSUS...

RESPONDENTS: 1. Dy. Inspector General of Prison
(East Region), Nagpur.

2. Superintendent of Jail,
Morshi Open Prison, Morshi District, Amravati.

Ms S.B. Khobragade, Counsel for petitioner
Shri A.V. Palshikar, Addl. PP for respondents

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATE : 23/10/2020.

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

1. Heard. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned Counsel for the parties.
2. The petitioner's application, seeking furlough was rejected by the respondent no.1 on 16/07/2020.
3. According to the learned Counsel for the petitioner, such rejection was illegal. However, the learned Additional Public

Prosecutor submits that the impugned order is fully in consonance with the Prisons (Bombay Furlough and Parole) Rules, 1959.

4. The only ground on which the petitioner's application has been rejected in the present case is that in September, 2013, when the petitioner was granted fourteen days furlough leave, the petitioner did not return within the time given for his surrender and was required to be brought back by police to the prison after a delay of 40 days. Such belated reporting to the prison and that too in a coercive manner resulted in the petitioner being convicted for an offence punishable under Section 224 of the Indian Penal Code on 18/2/2014.

5. On going through the impugned order, we find that the petitioner is now in the open prison. At the time of conviction of the petitioner under Section 224 of Indian Penal Code, the petitioner was lodged in Akola prison.

6. These facts would show that after the conviction of the petitioner for the aforesaid offence, much water has flown and now it is an accepted fact on the part of the respondents that the petitioner's conduct has improved so much as to instill faith in the authorities regarding petitioner's good conduct, which warranted the transfer of the petitioner from a closed prison to an open prison.

7. In these circumstances, we are of the opinion that although there is a disqualification under Rule 4 (10) of the Prisons (Bombay Furlough and Parole) Rules, 1959 as regards the prisoners, who have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough, we are of the view that this disqualification does not hold any longer by virtue of the improvement in the conduct of the petitioner. If it were not so, the authorities would not have taken a decision to transfer the petitioner from a closed prison to an open prison.

8. In the result, we are inclined to allow this petition and it is allowed accordingly. The impugned order is hereby quashed and set aside. The respondent no.1 is directed to grant furlough leave to the petitioner, in accordance with his eligibility and subject to such conditions, as may be found suitable to be imposed by the respondent no.1, within a period of two weeks from the date of receipt of the order.

Rule is made absolute in the aforesaid terms.

JUDGE

JUDGE

Wadkar

**Shailendra
Wadkar**

Digitally signed by
Shailendra Wadkar
Date: 2020.10.23
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