

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

LD-VC- CRIMINAL WRIT PETITION NO. 392/2020

Ziyaulla Khan Zakaulla Khan,
Convict No. C/4231,
Presently at Central Prison,
Amravati

.... **PETITIONER**

// VERSUS //

- 1] State of Maharashtra,
Through the Deputy Inspector General (Prison)
Eastern Region, Nagpur
- 2] The Superintendent, Central Prison,
Amravati

.... **RESPONDENT(S)**

Shri M.N. Ali, Advocate for the petitioner
Shri M.K. Pathan, APP for the respondent/State

CORAM : Z.A.HAQ & N.B. SURYAWANSHI, JJ.
DATED : 23/06/2020

ORAL JUDGMENT : (PER:- N.B. SURYAWANSHI, J.)

- 1] **RULE.** Rule made returnable forthwith.
- 2] The petitioner seeks directions against the respondents to release him on furlough leave for a period of 4 weeks. At the time of filing of the petition, the application dated 16/05/2020 submitted by the petitioner

to the respondent no. 1 seeking furlough leave was pending. During the pendency of this petition, the said application came to be rejected by the order dated 03/06/2020 - copy of which is placed on record by the learned APP alongwith the affidavit filed for opposing the petition. The rejection of furlough to the petitioner is on the ground that there was adverse police report against the petitioner. On earlier two occasions, when the petitioner was released on parole leave, he reported late and once he was required to be arrested. He also reported late when he was released on furlough leave. On these grounds, the furlough leave was refused to the petitioner.

3] Learned advocate for the petitioner submitted that though in the year 2015, the petitioner was late by 60 days, he had surrendered on his own. In fact, he had submitted application seeking extension of parole leave which was not decided at that point of time. It is further submitted that the petitioner was thereafter granted parole leave for his sister's marriage vide order dated 16/03/2016 passed in Criminal W. P. No. 186/2018 for a period of 7 days and the petitioner had surrendered on his own on 25/03/2016 i.e. on due date. The respondents have not taken into consideration the relevant factors while deciding the leave application of the petitioner and hence the impugned order is unsustainable and the same is liable to be quashed and set aside.

4] Learned APP, on the other hand, supports the impugned order and states that all the relevant grounds were considered and the authority was justified in rejecting the furlough leave to the petitioner.

5] It is a matter of record that on earlier occasions though the petitioner surrendered late, on the last occasion when the petitioner was granted parole of 7 days for marriage of his sister, he has surrendered on due date. This aspect ought to have been taken into consideration by the respondents while deciding the leave application of the petitioner. Hence, the following order:-

(a) The impugned order is hereby quashed and set aside.

(b) The respondents are directed to release the petitioner on furlough for 28 days on complying with the conditions to be imposed by the respondents.

(c) We make it clear that in case the petitioner fails to surrender on due date, a serious note of it will be taken at the time of considering the leave application of the petitioner, on the next occasion.

Rule is made absolute in the above terms with no order as to costs.

ANSARI

JUDGE

JUDGE