

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

CRIMINAL WRIT PETITION NO. 487 OF 2020

Amar Devanand Patil, C-5508,
Aged about 24 years, Occu. - Nil,
(Presently in Central Prison
Amravati)

.... **PETITIONER**

// VERSUS //

- 1) State of Maharashtra,
through Deputy Inspector General
of Prison, Eastern Region,
Nagpur.
- 2) Superintendent of Jail,
Central Prison, Amravati,
Distt. Amravati.

.... **RESPONDENTS**

Shri Raju Kadu, counsel for the petitioner.
Shri A. A. Madiwale, A.P.P. for the respondents.

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

DATED : 15th December, 2020

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

1. Heard. **Rule.** Rule made returnable forthwith.
2. Heard finally by consent of the learned counsel appearing
for the parties.

3. Perused the impugned order and the reply. The reply is vague and it does not speak anywhere and it is not possible to understand from it the ground on which this petition is resisted. This is more so about the impugned order. The impugned order is vague as it could be. It says that the petitioner is not eligible for grant of furlough leave in accordance with the provisions contained in rule 4(6) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short the “Rule of 1959”). It does not say as to which part of rule 4(6) of the Rules, 1959 is not fulfilled by the petitioner. Rule 4(6) is reproduced as under :-

“4. Eligibility for furlough-

All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough :-

(1) -----

(2) -----

(3) -----

(4) -----

(5) -----

(6) Prisoners whose work and conduct are, in the opinion of the Superintendent of the Prison, not satisfactory enough;”

4. It is clear that the competent Authority is required to apply the mind to the work and conduct of the prisoner seeking his release on furlough and after considering the material available on record. The

authority is required to satisfy himself or herself subjectively that the work and conduct of the prisoner concerned is not satisfactory enough. Such satisfaction will always be subjective but it may be based upon on the objective material available before the authority. The concerned authority is, therefore, required to record the satisfaction that in his or her opinion, the concerned prisoner's work and conduct both are not satisfactory enough, after perusal of the material available on record, although, it is not necessary for such an authority to reveal in details the contents of the material considered by him or her. After all, denial of furlough leave to the petitioner has adverse consequences on the conduct and psyche and physical health as well as mental health of the concerned prisoner, and therefore, any order which is to be passed in such a matter must be speaking one.

5. Before we part with this judgment, we would like to sound a note of caution for the respondent No.1, who has passed the impugned order. As we have stated, the impugned order is non speaking, is the result of non application of mind on her part and this is also not the first non speaking order that we have come across. Earlier, similar orders passed by the same authority have been noticed by us. We would request her to be more careful in future while dealing with such matters.

6. None of the criteria stated above are fulfilled in the present case and therefore, we find that the impugned order deserves to be quashed.

7. The petition is allowed. Impugned order is quashed and set aside.

The respondents are directed to release the petitioner on furlough leave, in accordance with law and as per his entitlement subject to suitable conditions, within a period of two weeks from the date of the order.

Rule is made absolute in the above terms.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE J.)