

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

CRIMINAL WRIT PETITION NO. 491 OF 2020

PETITIONER :- Ankush Sanjay Mandhekar
C-5233, Aged about 29 years, Occup.Nil
(Presently in Central Prison Amravati)

...VERSUS...

RESPONDENTS :-

1. State of Maharashtra, Through Deputy Inspector General of Prison, Eastern Region, Nagpur.
2. Superintendent of Jail, Central Prison, Amravati, Dist. Amravati.

Mr.Raju Kadu, counsel for the Petitioner.
Mr.A.M.Deshpande, Addl.PP for respondents

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

DATE : 15.12.2020.

ORAL JUDGMENT (Per :Sunil B.Shukre, J.)

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

3. On going through the impugned order, we are again constrained to repeat our observations which we have made in the Writ Petition no.487 of 2020, which is just now disposed of by us.

4. The impugned order is as vague as it could be. It is yet another example of non-speaking order, which has been passed without any application of mind whatsoever. Such orders, do have their deep impact on the psychology and physical health of the prisoners and therefore ought to be passed after due consideration of all relevant material.

5. The impugned order takes recourse to rules 4 (4), 4(6) and 6 of The Prisons (Bombay Furlough and Parole) Rules, 1959 (for short “Rules, 1959”), but does not speak anything about the satisfaction of the authority which has passed the order as to how the petitioner would become ineligible for grant of furlough leave in accordance with the provisions contained in the aforestated Rules, 1959.

6. Rule 4(4) of the Rules, 1959 is about non

recommendation for grant of leave by the concerned police officer on the grounds of public peace and tranquility. Nothing is stated about the satisfaction of the concerned authority regarding disturbance of public peace and tranquility in case, if the petitioner is released on furlough leave.

7. Rule 4(6) of the Rules, 1959 is in respect of the opinion of the concerned authority as the work and conduct of the concerned prisoner being not satisfactory enough. It is not known as to whether or not any material was provided to the respondent no.1 for his examination and reaching his subjective satisfaction about the work and conduct of the petitioner not being satisfactory enough. The respondent no.1, who has passed the impugned order has not even cared about expressing the opinion about the work and conduct of the prisoner being not satisfactory enough.

8. Rule 6 of the Rules, 1959 speaks about prohibition on granting furlough to the prisoner unless they are satisfied that a prisoner can provide a suitable surety to ensure his due surrender

back to the prison authorities. Once again, the impugned order is woefully lacking on this parameter of law. It does not even whisper about the subjective satisfaction of the respondent no.1, reached upon his consideration of some objective or solid material before him regarding the worth of the surety, that the surety proposed to be provided by the petitioner was not suitable, in his considered opinion. The deficiencies in the impugned order, which we have discussed in the aforestated paragraphs would sufficiently show the non application of mind on the part of the respondent no.1 and the impugned order being passed in a mechanical manner. We have been noticing that the orders in such matters like furlough and parole are passed by the authorities on whom powers are confirmed to decide such applications under the Rules, 1959 in a highly unsatisfactory manner. The orders are, many a times, seen to be non speaking orders and they exhibit quite glaringly the non application of mind on the part of the authorities. It appears to us that some format has been devised for passing of such orders and what is done before passing of the order is invariably to fill in the blanks in the format. This could be verified and seen from the orders

challenged in various writ petitions. Few of such orders are already before us, one in the present petition and the second in the Writ Petition No.487 of 2020. If both these orders are compared with each other, we would find that they are almost identical with each other, at least on the reasoning parts thereof.

9. 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 his part and this is not the first non speaking order that we have come across. Earlier also, similar orders which were passed by the same authority were noticed by us. We would request him to be more careful in future while dealing with such matters.

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

11. The petition is allowed. Impugned order is quashed

and set aside.

12. 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.

13. Copy of this order be sent to Director General of Police Prisons for his information and for taking appropriate measures for preventing failure of justice of such orders resulting miscarriage of justice.

Rule is made absolute in the above terms.

(AVINASH G. GHAROTE,J.)

(SUNIL B SHUKRE,J.)