

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

CRIMINAL WRIT PETITION NO.740 OF 2019

Babu s/o Gulabrao Verma,
Aged Major, Occupation : Nil,
R/o C-78, Central Prison,
Nagpur. **Petitioner.**

:: V E R S U S ::

1. Deputy Inspector General Prison,
East Region,
Wardha Road, Nagpur – 440 012.

2. The Superintendent,
Nagpur Central Jail,
Nagpur – 440 012. **Respondents.**

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Shri Vipin M.Lute, Counsel for the Petitioner (Appointed).
Shri S.M.Ghodeswar, Addl.PP for Respondents/State.

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CORAM : **VM.DESHPANDE, &**
 ANIL S.KILOR, JJ.
DATE : **NOVEMBER 3, 2020**

ORAL JUDGMENT (Per : V.M.Deshpande, J.)

1. Heard learned counsel Shri Vipin M.Lute, appointed
through the High Court Legal Services Sub Committee at Nagpur,

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for the petitioner and learned Additional Public Prosecutor Shri S.M.Ghodeswar for respondents/State. **Rule.** Rule is made returnable forthwith. Heard finally by consent of learned counsel for parties.

2. By filing the present writ petition, the petitioner is challenging order dated 24.9.2018 passed by respondent No.1/Deputy Inspector General of Prisons, Nagpur rejecting an application filed on behalf of the petitioner to release him on furlough leave. Along with the said relief, the petitioner has prayed that he be released on furlough leave for a period of 28 days on furnishing Personal Bond and without any surety.

3. On 30.1.2008, the petitioner was convicted by learned 4th Ad hoc and Additional Sessions Judge at Nagpur for offences punishable under Sections 302 and 452 read with Section 34 of the Indian Penal Code. For offence punishable under Section 302 read with Section 34 of the Indian Penal Code, learned Judge of the Court below imposed life imprisonment upon the petitioner,

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while for offence punishable under Section 452 read with Section 34 of the Indian Penal Code, learned Judge imposed 3 years imprisonment. Learned Judge of the Court below observed that both these sentences shall run concurrently.

4. Learned Additional Public Prosecutor Shri S.M.Ghodeswar for respondents/State, justifies order dated 24.9.2018 passed by respondent No.1/Deputy Inspector General of Prisons, Nagpur rejecting an application filed on behalf of the petitioner to release on furlough leave inasmuch as on previous occasion, when the petitioner was released on furlough leave, he did not surrender to Prison Authority and he was required and brought back to prison on 17.9.2011. Thus, he overstayed for about 71 days. He also submits that proposed surety, on verification during enquiry reveals that, she does not know the petitioner. On these two counts, learned Additional Public Prosecutor has opposed the writ petition.

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5. No doubt true that, on last occasion, when the petitioner was released on furlough leave, he did not surrender to Prison Authority; he was required and brought back to prison by the State machinery, and he overstayed for about 71 days. However, in the petition itself it has been stated that during his earlier furlough leave, his wife and mother were seriously ill and his mother passed away due to illness. Due to poor financial and medical condition of his wife and mother, he could not surrender within time. This particular assertion made by learned counsel for the petitioner, is not at all disputed by learned Additional Public Prosecutor for respondents/State rather ailment of the wife and mother is admitted, however learned Additional Public Prosecutor submitted that he is not armed with instructions as to whether the mother of the petitioner died due to illness.

6. Be that as it may, it is clear that in the year 2011, when the petitioner was released on furlough leave, his mother and wife were suffering from serious illness. Obviously, the petitioner being husband and son was required to take care of

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them. In such a situation, if he is not surrendering, in our view, the explanation offered by the petitioner, which is found to be genuine one, cannot be an impediment in subsequent prayer for grant of furlough leave by the Authority.

7. Insofar as surety aspect is concerned, in our view, in prayer clause (b) of the petition, it has been claimed by the petitioner that he be released on Personal Bond.

8. Admittedly, the petitioner is undergoing his life imprisonment in open prison. Rule 5 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, the said Rules), deals with “*furlough not to be granted without surety*”. However, proviso to the said Rule is as under:

“Provided that the sanctioning authority may dispense with the requirement for a surety where prisoners are confined in open prisons as defined in clause (b) of rule 2 of the Maharashtra Open Prison Rules, 1971.”

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9. In the present case, it is an admitted position before this Court that the petitioner is serving life imprisonment in open prison. If that be so, with the aid of the said proviso to Rule 5 of the said Rules, the petitioner can always pray for dispensation of surety. In this view of the matter, we pass following order:

ORDER

- (1) The criminal writ petition is allowed.
- (2) Order dated 24.9.2018 passed by respondent No.1/Deputy Inspector General of Prisons, Nagpur rejecting application filed on behalf of the petitioner for grant of furlough leave is hereby quashed and set aside.
- (3) The petitioner be released on furlough leave for 28 days on his executing a Personal Bond without any surety.
- (4) On expiry of the furlough leave, the petitioner shall report to the Jail Authority well in time.

Judgment

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(5) Fees payable to learned counsel Shri Vipin M.Lute appointed through the High Court Legal Services Sub Committee at Nagpur for the petitioner are quantified at Rs.2500/- towards his profession charges.

Rule is made absolute in aforesaid terms.

JUDGE

JUDGE

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