

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

CRIMINAL WRIT PETITION NO. 876/2018

PETITIONER : Sheshrao Chaitram Sonone,
Convict No. C/23,
Open Prison, Gadchiroli.

...VERSUS...

RESPONDENTS: 1. Deputy Inspector General (Prisons)
(East), Nagpur.
2. The Superintendent,
Open Prison, Gadchiroli.
3. Superintendent,
Central Jail, Nagpur

Shri M.N.Ali, Advocate for petitioner
Shri N.R.Patil, APP for respondent nos.1 to 3

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.
DATE : 07/12/2020.

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

.1] Rule. Rule made returnable forthwith. Heard finally
with the consent of the learned Counsel for the parties.

2] The petitioner was released on furlough leave on
01.06.2015 for a period of 14 days. His due date of surrender was
16.06.2015. The petitioner did not surrender himself before the jail
authority on that date and he surrendered after a delay of 14 days.

3] The delay occurred in surrendering on the part of the petitioner resulted in the initiation of penal action against the petitioner in accordance with the provisions of Prison Manual. The petitioner was also handed out punishment of curtailment of 17 days remission by the order passed on 03.08.2015, which was approved by the concerned Additional Sessions Judge on 29.03.2017.

4] The petitioner wondered as to how such punishment could be given to him even when he was not communicated anything about the application that he had made on 05.06.2015, seeking extension of his furlough leave. On one fine morning, the petitioner was served with the order dated 09.03.2018 which informed him that his about three years old furlough leave application had been rejected by the D.I.G. (Prisons), East Division, Nagpur. The order stated that, as Police Station had given favourable report, but the Superintendent of Police, Nagpur (Rural) did not submit any report, the D.I.G. (Prisons) would reject the request of the petitioner for extension of his furlough leave. No other reason was stated in the order dated 09.03.2018. It is this order which is under challenge before this Court.

5] The copy of the extension application dated 05.06.2015 accompanied by medical certificate was produced before us by the learned counsel for the petitioner. We have gone through the said application and the application is returned to the learned counsel for the petitioner. The most significant thing that shikes our mind is the ground taken in the application. The petitioner has applied for extension of furlough leave for the reason that his wife was ailing and his presence near her was required in order to ensure that appropriate medical treatment was given to his wife. The impugned order, however, does not deal with this reason stated in the application dated 05.06.2015 in any manner. It is based upon the only ground that the Superintendent of Police, Nagpur (Rural) did not submit his report. If the Superintendent of Police had not submitted his report, there was atleast one police report of P.S.I. P.S. Narkhed, which went in favour of the petitioner. This favourable report could have been considered by the D.I.G. Nagpur, but he did not, perhaps he was waiting for a report which would go along with the mind he already appeared to have made up. If he had dealt with the application with any objectivity, we do not think that the favourable report of P. S. Narkhed would have failed to impress him,

especially when the Superintendent of Police (Rural) had not given his report. In such cases, the silence of one authority would logically mean the approval of the opinion given by the subordinate authority. But, that was not be so in the present case.

6] As stated by us, the impugned order does not deal with any medical ground taken in the application dated 05.06.2015. This is an instance of complete non-application of mind on the part of the D.I.G. (Prisons), Nagpur.

7] The approach of the D.I.G. (Prisons), Nagpur and non application of mind on his part would impel us to find that the impugned order cannot sustain the scrutiny of law even for a moment and it deserves to be quashed and set aside. Besides, the impugned order has been passed with considerable delay of almost about 2 years and 9 months and there is no justification given for such belated consideration of the application dated 05.06.2015. When the punishment was imposed way back in August, 2015, vide order dated 03.08.2015, any consideration of the extension application dated 05.06.2015 would only be a process which would have produced a result in the nature of foregone conclusion and

therefore, the impugned order rejecting the application dated 05.06.2015 is an attempt to justify the prison punishment already handed out to the petitioner. Such an order, therefore, must go and this Court would also have to direct that the application seeking extension of furlough be allowed with all necessary consequences.

8] In the result, the petition is allowed. The impugned order dated 09.03.2018 is hereby quashed and set aside. The extension application dated 05.06.2015 is hereby allowed. The prison punishment awarded to the petitioner vide order dated 03.08.2015 r/w the decision of the concerned Additional Sessions Judge dated 29.03.2017 are hereby quashed and set aside.

9] Rule is made absolute accordingly.

10] The legal remuneration of Rs.2500/- be paid to the learned appointed counsel.

JUDGE

JUDGE