

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO. 605 OF 2021**

Mohammad Altamash s/o. Mohammad Ismail,  
Age 52 years, Occu. At present Nil,  
R/o. Near Zakira Masjid,  
Rajiv Gandhi Nagar, Shirdi Road,  
Khuldabad, Tauka and District Aurangabad. .. Petitioner

**Versus**

The State of Maharashtra,  
Through Superintendent of Jail,  
Harsool, District Aurangabad. .. Respondent

...

Ms. S. S. Kazi, Advocate for petitioner  
Mr. S.J. Salgare, APP for the respondent-State

...

**CORAM : V. K. JADHAV AND  
S. G. DIGE, JJ.**

**DATE : 23<sup>rd</sup> JULY, 2021**

**JUDGMENT ( PER : S. G. Dige, J. ) :-**

Rule. Rule made returnable forthwith. By consent, heard finally at the admission stage.

2. The petitioner had preferred an application for furlough. It came to be rejected by an order dated 22-02-2021. Being aggrieved thereby, this petition has been preferred praying that the said order be quashed and set aside and the petitioner be released on furlough.

3. The learned counsel for the petitioner submitted that the petitioner had filed an application for furlough leave on 7<sup>th</sup> October, 2020, but it came to be rejected by the respondent-authority. Learned

counsel further submitted that the impugned order is contrary to law. The respondent-authority failed to consider the case of the petitioner, on the ground of reporting late shall not be deprived the right of furlough leave, he is suffering from various ailments, so the respondent-authority can put some stringent conditions before giving furlough leave. Learned counsel further submitted that offenders can be reformed if they are rightly diagnosed and correct treatment administered to them.

4. Learned APP appearing for respondent-authority submitted that the petitioner was released on furlough on 14-09-2007, thereafter he did not surrender before the authority within time and he was absconding thereafter for a period of twelve years, one month and eighteen days. He was traced out and arrested. Hence, the order passed by respondent - authority is legal and valid.

5. We have carefully perused the impugned order passed by the respondent-authority, whereby the application for furlough leave of the petitioner came to be rejected. We find that in the said order it is clearly stated that the report of the Police is adverse. On earlier occasion when the petitioner was released on furlough, he did not return back in time and was absconded. The Police then traced the petitioner and arrested him and brought him back to the prison. So, it is clear that the application of the petitioner is rejected on the ground that he was absconded; when he was released on furlough on earlier occasion.

6. The Prisons (Bombay Furlough and Parole) Rules, 1959 are framed by the Government, in exercise of the powers conferred by clauses (5) and (28) of Section 59 of the Prisons Act, 1894 ('Act' for short). Rule 4 thereof, in particular set outs the circumstances when the prisoner shall not be granted furlough, which reads as under :

***“4. When prisoners shall not be granted furlough.***

*The following categories of prisoners shall not be considered for release on furlough:-*

- (1) Habitual prisoners.*
- (2) Prisoners convicted of offences under Sections 392 to 402 (both inclusive) of the Indian Penal Code.*
- (3) Prisoners convicted of offence under the Bombay Prohibition Act, 1949.*
- (4) Prisoners whose release is not recommended in greater Bombay by the Commissioner of Police and elsewhere, by the District Magistrate on the ground of public peace and tranquility.*
- (5) Prisoners who, in the opinion of the Superintendent of the prison show a tendency towards crime.*
- (6) Prisoners whose conduct is in the opinion of the Superintendent of the Prison, not satisfactory enough.*
- (7) Prisoners confined in the Ratnagiri Special Prison [other than prisoners transferred to that prison for jail services].*

- (8) *Prisoners convicted of offence of violence against person or property committed for political motives, unless the prior consent of the State Government to such release is obtained.*
- (9) *A prisoner or class of prisoners in whose case the State Government has directed that the prisoner shall not be released of that the case should be referred to it for orders.*
- (10) *Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough.”*

So as per Rules 4(4), furlough leave cannot be granted if there is no recommendation of police as well as, as per Rule 4(10), furlough leave cannot be granted if prisoner defaulted to surrender after release on furlough.

7. The learned counsel for the petitioner submitted that the petitioner-convict has right to be released on furlough. He placed reliance on the decision of this Court, Bench at Nagpur, in the case of ***Raju and others Versus the DIG prisons (E) (R) and others***, reported in ***2015(1) Bom.C.R. (Cri) 64***, wherein it has been observed as under -

*“19. . . . . later part of Rule 4(10) of the 1959 Rules speaks of "the prisoners having defaulted in any way" in surrendering themselves at the appropriate time after*

*release on parole or furlough. Thus, the Rule as it stands does not make a reference to as to whether the prisoner was required to be arrested or otherwise. As noticed earlier, this Court in various decisions has found that it would be for the authorities to consider all the attending circumstances and the fact that on earlier occasion the prisoner was required to be arrested would be one of such circumstance to be considered while deciding as to whether the prisoner would be disentitled to release on furlough under Rule 4(10) of the 1959 Rules. Thus, we find that in view of the Rule as it stands and the interpretation placed on the same, the same cannot be held to impinge upon the fundamental rights guaranteed under Article 14 or 21 of the Constitution of India. . . . .”*

8. The learned counsel for the petitioner further placed reliance on the Judgment in the case of - ***Asfaq Versus State of Rajasthan*** reported in ***(2017) 15 SCC 55***, wherein the Hon’ble Supreme Court has observed in paragraph No. 9 as under:

“9. There is a subtle distinction between parole and furlough. A parole can be defined as conditional release of prisoners i.e. an early release of a prisoner, conditional on good behaviour and regular reporting to the authorities for a set period of time. It can also be defined as a form of conditional pardon by which the convict is released before the expiration of his term. Thus, the parole is granted for good behaviour on the condition that parolee regularly reports to a supervising officer for a specified period. Such a release of the prisoner on parole can also be temporarily on some basic grounds. In that eventuality, it is to be treated as mere suspension of the sentence for time being,

*keeping the quantum of sentence intact. Release on parole is designed to afford some relief to the prisoners in certain specified exigencies. Such paroles are normally granted in certain situations some of which may be as follows:*

*(i) a member of the prisoner's family has died or is seriously ill or the prisoner himself is seriously ill; or*

*(ii) the marriage of the prisoner himself, his son, daughter, grandson, grand daughter, brother, sister, sister's son or daughter is to be celebrated; or*

*(iii) the temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation of his land or his father's undivided land actually in possession of the prisoner; or*

*(iv) it is desirable to do so for any other sufficient cause;*

*(v) parole can be granted only after a portion of sentence is already served;*

*(vi) if conditions of parole are not abided by the parolee he may be returned to serve his sentence in prison, such conditions may be such as those of committing a new offence; and*

*(vii) parole may also be granted on the basis of aspects related to health of convict himself."*

9. Learned counsel, in support of his submission, placed reliance on the Judgment in the case of – ***Pralhad Dnyanoba Gajbhiye Versus State of Maharashtra and others***, reported in ***1996(1) BomCR 522***. This Hon'ble Court, in paragraph No. 5 of said Judgment, held as follows:

*"5. It is now well settled that furlough and parole have two different purposes. Furlough is a matter of right whereas parole cannot be claimed as a matter of right. Furlough is to be granted*

*periodically under Rule 3 of the furlough Rules and the principal object of grant of furlough is to enable the prisoner to have family association and to avoid ill-effects of continuous prison life. While undergoing sentence, in accordance with the Furlough Rules, a prisoner is accorded social inter-action, man being a social animal. Social life is brought into existence periodically for a prisoner by providing furlough. Furlough is not provided or granted for any particular reason and if he is not ineligible under Rule 4 of the Furlough Rules, furlough has to be granted and even if a disqualification is there under Rule 4, still it is not necessary that grant of furlough shall be refused.”*

10. The Hon’ble Supreme Court, ***in Suo Motu Writ Petition (C) No. 1 of 2020 (In Re : Contagion of Covid 19 Virus in Prisons)***, has held that to release the inmates considering pandemic situation to decongest the prisons. It has been further held that, in extraordinary cases, the authorities are directed to be considerate to the concerns of the inmates.

11. In the present case, the petitioner is convicted for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer life imprisonment and now he is undergoing said sentence. On earlier occasion, he was released on furlough, however, he did not return back in the prison in time. He remained absconded for more than twelve years, thereafter, police traced him and arrested as well as report of Police is adverse against him. So, as per Rule 4(4) and 4 (10) of Rules of 1959, the order passed by the respondent-authority is legal and valid. If a prisoner has not reported back to the prison after

the expiry of furlough leave for more than twelve years, he does not deserve for any sympathy. Nothing is produced on record to show that the petitioner is suffering from various ailments. In view of past record of the petitioner, the order of rejection of furlough leave does not call for any interference.

12. The Writ Petition stands dismissed. Rule discharged.

**( S. G. DIGE )**  
**JUDGE**

**( V. K. JADHAV )**  
**JUDGE**

mtk