

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

CRIMINAL WRIT PETITION NO.779/2021

Karan @ Mahesh S/o. Ganpat Jogi Vs. State of Maharashtra and Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri A. Y. Sharma, Advocate for Petitioner.
Ms N. R. Tripathi, A.P.P. for Respondents/State.

CORAM : M. S. SONAK AND
PUSHPA V. GANEDIWALA, JJ.

DATE : 25/10/2021.

1. Heard Shri A. Y. Sharma, learned Counsel for the petitioner and Ms N. R. Tripathi, learned Additional Public Prosecutor for the State.
2. The petitioner seeks release on furlough.
3. The record indicates that the petitioner has been convicted under Section 302 of the Indian Penal Code and sentenced to rigorous imprisonment for life. In the year 2005, the petitioner was released on furlough but, the petitioner, did not return to suffer incarceration. After almost 4662 days, the petitioner, was traced and arrested.
4. Ms N. R. Tripathi, learned Additional Public Prosecutor has referred to the provisions of the Rules of 1959 and has pointed out that in such circumstances, there is no case made out to interfere with the order of the Competent Authority declining furlough to the petitioner.
5. Rule 4(10) of the Prisoners (Bombay Furlough and

Parole) Rules, 1959 provides that the 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 will not be eligible for furlough. In the present case, there is no challenge to the validity of this Rule. The Authorities, have acted consistent with this Rule.

6. Shri A. Y. Sharma, learned Counsel for the petitioner points out that some prisoners, who had also defaulted in surrendering have been released on parole or furlough. Apart from the fact that we do not have the details, we feel that no discrimination in the claim on such basis. Besides, in this case, we find, if the petitioner had been released on furlough in the year 2005 but chose not to return for almost 4662 days, which is an inordinate period. There is no guarantee that the petitioner, will, honour the terms and conditions if he is once again released on furlough.

7. In the peculiar facts of this case, we do not feel that discretion has been exercised unreasonably by the Authorities, to warrant any interference.

8. Accordingly, we dismiss this petition without going into the larger issue of the constitutional validity of the Rule 4(10) of the said Rules of 1959, since, the same issue has not even been raised before us in this petition.