

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

CRIMINAL WRIT PETITION NO.1135/2018

Anil Ramaji Surkar,
C-4544, Central Prison, Amravati
District Amravati.

..... PETITIONER

// VERSUS //

1. The Divisional Commissioner,
Amravati Division,
Bye Pass Road, Camp,
Amravati.

2. The Supdt of Prison,
Central Prison,
Amravati.

.... RESPONDENTS

Shri Tarun Parmar, Appointed counsel for petitioner.
Miss. H. N. Jaipurkar, APP for respondents.

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

DATED : 18/02/2021

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

1] Heard.

2] **Rule.** Rule made returnable forthwith.

3] Heard finally by consent of the learned counsel appearing
for the parties.

4] The petitioner has challenged the legality and correctness of the show cause notice dated 29.07.2016 calling upon him as to why punishment of deduction of remission period by 300 days (60 x 5) @ 1:5 for the misconduct of the petitioner in his reporting late to the Jail Authorities after his release on parole be not imposed. The delay caused in petitioners surrendering himself before the Jail Authorities is of 60 days.

5] It is the contention of the learned counsel for the petitioner that his parole leave was to expire on 29.05.2016 and before expiry of the parole leave, the petitioner had applied on 11.05.2016 for extension of the parole leave for a further period of 30 days and even before this application was decided by the competent Authority i.e. the respondent no.1, the impugned show cause notice came to be issued to him.

6] So far as the dates and the period of delay are concerned, there is no dispute. The dispute is only about the Authority of the respondent no.2 in issuing show cause notice to the petitioner.

7] Upon receiving personal instructions from Pandurang Shamrao Bhusare, In-charge Superintendent, who is personally present in Court, learned APP, submits that the application was indeed received well in time by the respondent no.2 and respondent no.2 performed his duty by forwarding the application to the respondent no.1 and

respondent no.2 is not aware as to why this application was not decided by respondent no.1. Respondent no.1 has not filed any reply in this matter. But, the fact remains that the application seeking extension of parole leave was filed by the petitioner well in time and therefore, we are of the opinion that unless and until this such an application was decided, respondent no.2 had no authority in law to issue any show cause notice such as the one impugned in this petition. It appears to us that the application dated 11.05.2016 is still pending with respondent no.1 and it would be necessary that this application is decided by the respondent no.1 in accordance with law before any action is proposed to be taken against the petitioner, if it is required and it would be required only in case such an application is rejected by the respondent no.1 and such rejection attains finality in law.

8] In these circumstances, we find that this petition deserves to be partly allowed and it is partly allowed accordingly. The impugned show cause notice is hereby quashed and set aside and so also all the actions taken in consequence of the impugned show cause notice. The respondent no.1 is directed to decide the application dated 11.05.2016 within a period of two weeks from the date of the receipt of the order. The respondent no.1 is further directed to offer reasonable opportunity of hearing and also liberty to the petitioner to file on record documents, in proof of his claim, if the petitioner, so desires.

9] Legal remuneration of Rs. 2,500/- (Rs. Two Thousand Five Hundred Only) be paid to the learned appointed counsel.

Rule is made absolute.

(AVINASH G. GHAROTE, J) (SUNIL B. SHUKRE J.)

Sarkate.