

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH
AT AURANGABAD

35 CRIMINAL WRIT PETITION NO. 771 OF 2022

SANJAY SAHEBRAO @ NATHA PAWAR (C-8452)
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Jaiswal Rupesh A
APP for Respondent No : Mr. R. V. Dasalkar

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CORAM : SARANG V. KOTWAL
BHARAT P. DESHPANDE, JJ.
DATED : 04 JULY 2022

PER COURT:-

1. This is a petition where the petitioner is seeking directions to quash and set aside the orders passed by respondent nos. 2 and 3 dated 10.01.2022 and 11.05.2022, respectively. The effect of these orders is to deny the facility of furlough leave to the petitioner. In both these orders, the main ground for rejection of the petitioner's request for furlough leave is mentioned as "in the past when he was released on furlough leave in the year 2011, he was arrested 728 days after the period of furlough was over" and mainly on this ground, the present request made by him on 04.06.2021 was rejected.

2. Learned counsel for the petitioner relied on the judgment of another Division Bench of this Court in the case of ***Satish Shankarrao Shinde v. State of Maharashtra*** (Criminal Writ Petition No. 1535 of 2019) decided on 26.11.2019, in which it was held that the relevant Rule i.e. Rule 4(10) of the Prisons Rules, 1959 deals with grant of furlough referred to this situation. In that case, the Court was considering the cases where the prisoners had reported late after the period of their furlough leave was over. The Division Bench in that case observed that after sufficient time has passed since the date of lapse, it becomes duty of the authority to consider such applications of such prisoners on the basis of the conduct of the prisoner during the intervening period from the date of lapse.

3. Learned counsel for the petitioner submitted that the default committed by the petitioner was between the years 2011 and 2013. Now more than 9 years have passed and therefore, on humanitarian grounds and looking at the objects for enacting this particular Rule has to be taken into consideration. The petitioner, therefore, deserves one more chance to show his bonafide and he deserves to be granted furlough leave.

4. Learned APP opposes this petition. Learned APP referred to the order dated 05.05.2011 passed by a different Division Bench of this Court at Nagpur Bench in Criminal Writ Petition No. **258 of 2019** wherein it was observed that it was the duty of the prisoner to report back within time at the expiry of furlough leave and if he does not do so, he does not deserve any sympathy.

5. We have considered both these pleas. The order passed in *Satish Shinde's* case (supra) is later in point of time and it has discussed the Rule 4(10) of the said Rules in detail. In such cases, the request for furlough leave can be considered again. We are inclined to adopt the ratio of that judgment and we are of the opinion that the petitioner deserves one more chance to avail of this facility. Hence, the following order :

ORDER

- I. Both the orders i.e. order dated 10.01.2022 passed by respondent No.2 and the order dated 11.5.2022 passed by respondent No.3 which are at annexure "A" and annexure "C", respectively, are quashed and set aside.
- II. The petitioner is at liberty to make a fresh application before the D.I.G., Prisons for his release on furlough leave. It shall be decided

on its own merits taking into consideration the fact that since the past late surrender was at least 9 years ago.

III. The authorities are otherwise free to exercise their discretion.

IV. With these observations, the petition is disposed off.

BHARAT P. DESHPANDE, J.

SARANG V. KOTWAL, J.

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