

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1389 OF 2020**

Nitin Pramod Kendale	Petitioner
Versus	
The State of Maharashtra and ors.	Respondents

Mr. Rupesh A. Jaiswal, advocate for the petitioner.
Ms. M. H. Mhatre, APP for the State.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 18th APRIL, 2022.

P.C. :

1. The petitioner - convict number 15806 presently lodged in Yerawada Central Jail, Pune, is before this Court, by way of present petition challenging the order passed by respondent No.2 dated 11th February, 2020, whereby the appeal presented by the petitioner, in challenge to the rejection order for grant or furlough leave, was confirmed. Mr. Jaiswal, learned counsel appearing for the petitioner submitted that the petitioner made an application on 12th October, 2019 for grant of furlough leave. The application was rejected on the ground of belated surrender by the petitioner-convict. Respondent No.2, while deciding the appeal presented by the petitioner, reiterated the ground of belated surrender and also observed that in view of Rule 17 of

Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959, the petitioner is not entitled for availing furlough leave and additional ground is assigned by the appellate authority and the appellate authority observed that in case petitioner is released on furlough leave, there is no guarantee that the petitioner would maintain his good behavior and return back to the prison on due date. This ground is assigned on the basis of report submitted by the Sub-Divisional Police Officer, Shevgaon Sub-Division, Shevgaon.

2. Learned counsel for the petitioner vehemently submitted that the order passed by the prison authorities and confirmed by the appellate authority is wholly unsustainable. Mr. Jaiswal vehemently submitted that on one occasion in the year 2011 when the petitioner was released on furlough leave, the petitioner returned to the prison after 546 days. Mr. Jaiswal submitted that subsequent to that belated surrender till the application being submitted by the petitioner in the year 2019, the petitioner was never released either on parole leave or furlough leave and the solitary occasion of belated surrender is used as rider for rejection of the furlough leave. Mr. Jaiswal submitted that even the additional ground on the basis of report of the Sub-Divisional Police Officer, Shevgaon Sub-Division, Shevgaon, is not justifiable ground so as to reject the furlough leave. Mr. Jaiswal submitted that admittedly post year 2011 till the year 2019, when the petitioner was not released on any of the leave

for a single occasion, there was no material with the authority to form negative opinion and a solitary instance cannot be a criteria for arriving at a negative conclusion. Mr.Jaiswal also placed reliance on the judgment of the Division Bench of this Court reported in Satish Shankarrao Shinde versus the State of Maharashtra, 2019 CJ.(Bom) 2287, and particularly, the observation of the Division Bench reflected in paragraph 14.

3. *Per contra*, learned APP opposed the petition and submitted the details of the petitioner in tabular form. The same is taken on record and marked – 'X' for identification. Perusal of the report shows that the petitioner had availed furlough leave in the year 2011 from 14th September, 2011 to 12th December 2011 but he was brought back to the prison by effecting arrest on 17th October, 2013 and for this belated surrender of 546 days, the petitioner's name is permanently removed from the remission book. The table further reveals that till 31st March, 2022, the petitioner suffered imprisonment for 12 years, 10 months and 29 days.

4 Considering the above referred facts as well as considering the judgment of this Court, on which reliance is placed, we are of the opinion that Mr. Jaiswal, learned counsel for the petitioner, has made out case for allowing the petition partly. There is also merit in the submission

of the Mr. Jaiswal, learned counsel for the petitioner that solitary instance of belated surrender by the petitioner ought not to have been used as a rider for refusing the leave to the petitioner even after nine years of that solitary instance. Accordingly, we pass the following order :

O R D E R

- (a) The petition is partly allowed. The order impugned in the petition dated 11th February, 2020, passed by respondent No.2, is quashed and set aside.
- (b) The respondent - State is directed to consider the application of the petitioner afresh and pass appropriate orders as expeditiously as possible. Needless to state that the said order shall be passed independently on its own merits.

The writ petition stands disposed of in the above terms.

- 5. All concerned to act upon a copy of this order duly authenticated by the Registry of this Court.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)