

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 158 OF 2022

Sanjay Madhukar Waghade (C/9351),
Aged about 52 years, Occ. - Labour,
R/o Dhanla, Near Hanuman Mandir,
Tah. Lakhni, Dist. Bhandara.

.... **PETITIONER**

// VERSUS //

- 1) State of Maharashtra,
through Deputy Inspector General
(Prisons), East Region, Nagpur.
- 2) The Superintendent
Central Prison, Nagpur.

.... **RESPONDENTS**

Mr. A.K. Sorde, Advocate for the Petitioner.
Mrs. N.R. Tripathi, Additional Public Prosecutor for Respondents.

**CORAM : SUNIL B. SHUKRE AND
G.A. SANAP, JJ.**

DATED : 05.07.2022

ORAL JUDGMENT : (Per Sunil B. Shukre, J.)

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally
by consent of the learned counsel appearing for the parties.

2. It is true that in the year 2018 the Petitioner, while on
furlough, did not surrender to the jail authorities on the due date and

was required to be arrested and brought back to the prison, after the delay of about 173 days. It is also true that his earlier furlough application made in the year 2021 was rejected by the Respondent No.1, which order was confirmed by this Court by its order dated 12th August, 2021 in Criminal Writ Petition No.426 of 2021. But, the question is for how many days the Petitioner can be deprived of furlough only because, he had not surrendered on due date and was required to be arrested and brought back to the prison once in the terms.

3. The Provisions of Rule 4(10) of the Prisons (Bombay Parole and Furlough) Rules, 1959 (for short the “Rules of 1959”) state that a prisoner, who has escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering himself at the appropriate time after release on parole or furlough is not eligible to get the benefit of furlough. This rule has been interpreted by the Division Bench of this Court at Aurangabad in its judgment dated 26.11.2019 in Criminal Writ Petition No. 1535 of 2019 (*Satish Shankarrao Shinde Vs. The State of Maharashtra and Others*) along with another connected matters. The opinion of the Division Bench at Aurangabad is that this rule is not mandatory in nature and in fit cases, in spite of default having been made by a prisoner in surrendering on due date, when on furlough or parole, the prisoner can be considered to be given furlough

if, facts and circumstances of the case justify. The Division Bench interpreted rule 4(10) of the Rules of 1959 in this fashion, keeping in view the purpose of the furlough and parole scheme when it observed in paragraph No.10 of the judgment, as under :-

“The purpose behind the scheme is to see that the prisoner is allowed to mix in the society so that at the end when he comes out of the jail after serving the entire sentence, he knows the society well and he can adopt the changes which have taken place in the society. If that opportunity is not there, it will be difficult for prisoner to mix in the society and that will create problems for the society also. If it is presumed that the rule is mandatory then the purpose of the scheme itself will be defeated.”

Thus, the Division Bench held that only because there is a default committed by a prisoner in surrendering on the due date as stated in rule 4(10) of the Rules of 1959, furlough cannot be refused to the prisoner and the case of each of the prisoners needs to be considered separately on its own merits and upon proper justification. The Division Bench also held that if sufficient time has lapsed after the last default, the authority would be duty bound to consider the application of such a prisoner and decide it on the basis of the conduct of the prisoner during the intervening period from the date of the lapse. The relevant observations of the Division Bench appearing in paragraph No.14 are reproduced thus :-

“This Court holds that only for the second ground mentioned in the Rule 4(10) the furlough leave cannot be refused and the case of each prisoner needs to be consider separately on its own merits and proper justification needs to be given for refusal of the furlough leave. At the cost of repetition, this Court is observing that after sufficient time has passed since the date of lapse, it become duty of the authority to consider the applications of such prisoners and on the basis of the conduct of the prisoner during the intervening period, from the date of lapse, the authority can take proper decision.”

4. The view so taken by the Division Bench at Aurangabad in said case of *Satish Shankarrao Shinde*, accepting the view of the Full Bench of Gujarat High Court in the case of ***Bhikhabhai Devshi Vs. State of Gujarat and others, AIR 1987 Gujarat, 136*** commends to us. There are, of course, judgments as rightly pointed out by the learned Additional Public Prosecutor, which lay down that whenever there is a default committed by a prisoner in surrendering on the due date before jail authority, ordinarily the prisoner should not be granted furlough or parole on the sole ground of default. One of such judgments is of ***Murlidhar Ramchandra Bhalerao Vs. State of Maharashtra & Another, 2011 ALL MR (Cri.) 2132*** case and some other judgments taking this view have been rendered in Criminal Writ Petition No. 224 of 2013

decided on 25.06.2013 and Criminal Writ Petition No. 62 of 2016 decided on 16.03.2016. The judgment of ***Murlidhar Ramchandra Bhalerao*** (supra) has already been considered by the Division Bench at Aurangabad in the case of *Satish Shankarrao Shinde*, holding that the observations made therein are of general nature and have been made without making any interpretation of rule 4 of the Rules of 1959 and, therefore, it was found that case of ***Murlidhar Ramchandra Bhalerao*** (supra) would not help the case of Respondent authorities. In the writ petitions referred to above, the wider aspect of the Rules of 1959, have not been considered and therefore, we are of the view that the judgments in those writ petitions would also not help the case of the authorities.

5. In the present case, a time of more than three years has elapsed since the last default committed by the prisoner. This time gap between the last default and the application presently made by the Petitioner would be important in the present case and, therefore, it would be necessary for the authorities to consider the overall conduct of the Petitioner and also the reasons for his not surrendering on the due date before the prison authorities and decide the application of the Petitioner accordingly. This is also a view taken by the Division Bench at Aurangabad in the case of *Satish Shankarrao Shinde* (supra). We,

thus, find that there is no justification for upholding the impugned order and the Petition deserves to be allowed.

6. The Writ Petition is allowed. The impugned order dated 28.10.2021 is hereby quashed and set aside.

Matter is remanded back to the Respondents for fresh consideration and decision in accordance with law, in the light of observations made herein above.

We expect that the decision on the furlough application of the Petitioner shall be taken by the Respondents at the earliest and in any case within four weeks from the date of receipt of the order.

Rule is made absolute in the above terms.

(G.A. SANAP, J.)

(SUNIL B. SHUKRE, J.)

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