

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

CRIMINAL WRIT PETITION NO. 542 OF 2022

PETITIONER :- Shri.Tushar Mahesh Saujani,C-5411,
Aged about 41 years, occ.Nil,(Presently
in Central Prison Amravati)

...VERSUS...

RESPONDENTS :-

1. State of Mahabharata, through Deputy
Inspector General of Prison, Eastern
Region, Nagpur.
2. Superintendent of Jail, Central Prison,
Amravati, Distt.Amravati.

Mr.R.L.Kadu, counsel for the petitioner.
Ms.Nandita Tripathi, APP for Respondent Nos.1 and 2.

**CORAM : SUNIL B.SHUKRE &
M.W.CHANDWANI, JJ.**
DATE : 08.12.2022.

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

(1) Heard.

(2) Rule. Rule made returnable forthwith. Heard finally by
consent of the learned counsel appearing for the parties.

(3) From the observations made in the order dated, 04.08.2020 passed in Criminal Writ Petition No. 730 of 2020 filed by the petitioner, it becomes clear that the ground taken by the petitioner to justify his unauthorised absence, which is the ground of lock-down having been clamped due to Covid-19 pandemic is misplaced. In this order, the Co-ordinate Bench of this Court has categorically observed that this petitioner was avoiding to surrender and was staying out of prison unauthorisedly and that was the reason why a Co-ordinate Bench of this Court directed the jail Superintendent to take appropriate steps to arrest the petitioner and further directed that period of overstay by this petitioner be treated as unauthorised and penal action be taken against the petitioner, accordingly.

(4) Another Co-ordinate Bench of this Court, by an order passed on 28.10.2021 in Criminal Writ Petition No.712 of 2021 filed by the petitioner, granted liberty to him to move an application for his release on parole/furlough in terms of the Rules and Regulations that may be applicable.

(5) Learned counsel for the petitioner submits that in pursuance of the liberty so granted to him, the petitioner applied for grant of furlough, but unfortunately his application was rejected. According to the learned counsel, once, the liberty is granted to a prisoner like the petitioner to apply for grant of parole/furlough as the case may be, the concerned authority ought not to have rejected the application, which was the application filed for furlough by the petitioner in this regard in view of the liberty granted by this Court to the petitioner.

(6) We beg to differ with the learned counsel for the petitioner. There is a difference between liberty granted for moving the authority and direction issued to the authority to exercise discretion in favour of the applicant. Here in this case, only liberty was granted to the petitioner and that liberty was to be exercised by the petitioner in accordance with the Rules and Regulations, which may be applicable to his case. The petitioner has indeed applied for grant of furlough, but the liberty so granted to him by this Court vide its order dated 28.10.2021 has been circumscribed by the applicable Rules and regulations. In the

present case, the applicable Rule is Rule 4(10) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short the Prisons Rules). For the sake of convenience Rule 4(10) of the Prisons Rules, is reproduced as below.

“4(10) 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”.

(7) So it is clear that, whenever the prisoner commits default in surrendering the prison authority on the due date, the prisoner disentitles himself from grant of furlough.

(8) In this case, there is no dispute about the fact that the petitioner had defaulted in surrendering on the due date and his default was of such a nature that a Co-ordinate Bench of this Court was constrained to take a serious view of the default committed by the petitioner and that was the reason, why it directed the respondent authority to take appropriate steps to arrest the petitioner by treating his period of absence as unauthorised and further directed to take such penal action as may be permissible in

law against the petitioner as per the order dated 04.08.2020 passed in Criminal Writ Petitioner 730 of 2020.

(9) Thus, the Criminal Writ Petition is devoid of any merit and is liable to be dismissed and is accordingly dismissed.

(10) We, however, clarify that the observations made in this judgment shall not come in the way of the petitioner, in seeking regular parole or furlough, after one year, if he improves upon his behaviour and conduct while being in the prison. We also clarify that the petitioner would be at liberty to apply for furlough/regular parole, as the case may be, after lapse of period of one year from the date of the order, provided he is otherwise eligible for seeking furlough or regular parole as the case may be.

(11) Rule is discharged.

(M.W.CHANDWANI,J)

(SUNIL B. SHUKRE,J)