

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

CRIMINAL WRIT PETITION NO. 832 OF 2021

Shri Tushar Sahebrao Dalal
Convict No.C/9067,
Aged -Major, Occ: Nil, Confined at
Central Prison, Nagpur

... PETITIONER

---VERSUS---

1. The State of Maharashtra,
Through Divisional Commissioner,
Nagpur.
2. Superintendent, Central Prison,
Nagpur

...RESPONDENTS

Mrs S.D. Wankhede, Advocate for petitioner.
Ms N.R. Tripathi, Additional Public Prosecutor for respondents.

**CORAM : V. M. DESHPANDE AND
AMIT BORKAR, JJ.**

DATE : 26th APRIL, 2022.

JUDGMENT : (PER - AMIT BORKAR, J.)

1. Heard.
2. **Rule.** Rule made returnable forthwith.
3. By this petition under Articles 226 and 227 of the Constitution of India the petitioner is challenging the order dated 27.09.2021 passed by the respondent no.1 rejecting the application for parole of the petitioner on the ground that the

petitioner is not eligible under Rule 4(10) of the Prison (Mumbai Parole and Furlough) Rules, 1957 (hereinafter 'Rules of 1957', for short).

4. The petitioner convicted for the offence under Section 302 of the Indian Penal Code and is undergoing sentence in Nagpur Prison. On the date of filing of application he had completed 7 years of imprisonment.

5. The petitioner filed an application for his release on parole, which has been rejected by the impugned order dated 27.09.2021 by relying on Rule 4(10) of Rules of 1957.

6. The petitioner has therefore challenged said order by way of this petition.

7. This Court on 26.11.2021 issued notice to the respondents. In response of which, the respondent no.1 has filed reply stating that the petitioner is not eligible for being released for parole as he has not surrendered himself voluntarily on earlier occasion when he was released on parole.

8. We have carefully considered the provisions of Rule 4(10) of the Rules of 1957.

9. The learned counsel for the petitioner placed reliance on judgment of this Court in the case of **Kunal s/o Motiram Maske Vs. State of Maharashtra and another** (Criminal Writ Petition No.556 of 2019). This Court in paragraph 5 has held as under :

“5) Considering above facts and further objection raised by learned Additional Public Prosecutor of petitioner absconding after being released on furlough leave on 26/9/2017 and was required to be arrested and brought back to prison after lapse of 199 days, we find that this by itself can be no ground for rejecting application of petitioner in view of law laid down by the Hon’ble Apex Court in State of Maharashtra and another Vs. Suresh Pandurang Darvakar (AIR 2006 SC 2471) that furlough and parole are to be granted for two different purposes and that it is not necessary to state the reasons while releasing prisoner on furlough, but in case of parole, reasons are required to be indicated in terms of the Rules and that the prisoners on earlier occasion did not surrender after expiry of period of furlough or parole cannot by itself be a ground to deny such leave.”

10. In view of observations made by this Court in paragraph 5, we find that there is no impediment for releasing the petitioner on parole as prayed for.

11. We therefore pass the following order:

- i. The impugned order dated 27.09.2021 is quashed and set aside.
- ii. The respondent no.2 is directed to release the petitioner on parole for a period of 30 days on such terms and conditions as are permissible under the Rules within one week from the date of production of this order.
- iii. In view of peculiar facts and circumstances, this order shall not act as a precedent in any other case.

Rule in above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE

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