

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

959 CRIMINAL WRIT PETITION NO. 600 OF 2023

NARESHKUMAR VISHNU SHAHU
VERSUS
THE DEPUTY INSPECTOR GENERAL OF PRISONS, WESTERN
REGION, PUNE AND ANOTHER

.....
Advocate for Petitioner : Ms. Sharada P. Chate
APP for Respondent-State : Mr. G. O. Wattamwar
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**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

DATED : 19 APRIL 2023

PER COURT :-

1. The petitioner, who is confined in an open prison, is seeking furlough leave under the provisions of the Prisons (Bombay Furlough and Parole) Rules, 1959.
2. It appears that his leave application has been rejected on the sole count that the surety which he was intending to furnish had refused to stand as a surety and in spite of opportunity, he failed to furnish another one.
3. Conspicuously, in the leave application itself, the petitioner had sought to take benefit of the proviso to Rule 6 which *inter alia* gives a discretion to the sanctioning authority to dispense with the surety.

4. Even the Full Bench of this Court in the matter of ***Dipak Sudhakar Wakalekar v. State of Maharashtra and Others*** ; 2011 Cri.L.J. 3263 has expressly laid down that a prisoner, who is confined to an open prison, can be released on furlough and parole leave dispensing the requirement of furnishing surety.

5. The impugned communication dated 23.03.2023 does not demonstrate about the authority having taken into consideration the petitioner's entitlement to derive benefit under this proviso to Rule 6 of the Rules of 1959 as interpreted by the Full Bench of this Court.

6. Needless to state that if the discretion was indeed vesting in the authority, the communication ought to have spelt out in clear terms the reasons for not exercising the discretion in favour of the petitioner. It is apparent that the authorities are not even alive to the provisions of law and the decision of the Full Bench of this Court, else, in all probability, there would have been some reference in the communication.

7. Be that as it may, the impugned communication is clearly illegal and is liable to be quashed and set aside.

8. The writ petition is partly allowed. The impugned communication dated 23.03.2023 is quashed and set aside. Respondent no.1 is directed to consider the petitioner's application on its own merits, including his claim for grant of leave without furnishing surety bonds. Decision shall be taken within two weeks.

[ABHAY S. WAGHWASE, J.]

[MANGESH S. PATIL, J.]

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