

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 CRIMINAL WRIT PETITION NO. 645 OF 2023

GANESH S/O NARYAN KINDRE (C-5065)

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for Petitioner : Ms. Sharada P. Chate
APP for Respondent-State : Mr. G. O. Wattamwar

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938 CRIMINAL WRIT PETITION NO. 646 OF 2023

KIRAN S/O RAJU PUJARI (C-5111)

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....

Advocate for Petitioner : Ms. Sharada P. Chate
APP for Respondent-State : Mr. R. V. Dasalkar

.....

**CORAM : MANGESH S. PATIL AND
ABHAY S. WAGHWASE, JJ.**

DATED : 27 APRIL 2023

PER COURT :-

1. Heard both sides.
2. The petitioners, who are confined in open prison under the Maharashtra Open Prison Rules, 1971 are aggrieved by the orders granting them furlough leave *inter alia* subject to furnishing surety.
3. We have heard learned Advocate for the petitioners and the learned Assistant Public Prosecutors in the respective matters.

4. It does appear that the petitioners, while making an application for furlough leave, did not insist for invoking the proviso to Rule 6 of the Prisons (Bombay Furlough and Parole) Rules, 1959, and as interpreted by the Full Bench of this court in the matter of ***Dipak Sudhakar Wakalekar v. State of Maharashtra and others*** ; 2011 Cr.L.J. 3263, whereby insistence of surety from the prisoners confined in open prison has been held to be improper.

5. Since the petitioners themselves had not claimed such relief, no fault can be found with the authorities in passing the orders *inter alia* granting furlough leave subject to furnishing surety bond.

6. Be that as it may, if the law entitles a prisoner to take benefit of proviso to Rule 6 of the Rules of 1959, it would always be open for the authorities to extend that benefit to them irrespective of their prayer omitting to expressly seek that relief.

7. We allow the writ petitions and quash and set aside the impugned orders to the extent those impose a condition regarding furnishing surety bonds. The rest of the orders are maintained.

[ABHAY S. WAGHWASE, J.]

[MANGESH S. PATIL, J.]