

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1751 OF 2022

Tulshiram Balaji Puppawad

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....
Mrs. B.B. Gunjal, Advocate for petitioner

Mrs. V.N. Patil-Jadhav, A.P.P. for respondents

....

**CORAM : SMT. ANUJA PRABHUDESSAI AND
R.M. JOSHI, JJ.**

DATE : 24th FEBRUARY, 2023

ORDER (PER : R.M. JOSHI, J.) :

1. This petition takes exception to the order dated 30th September, 2022 passed by the Respondent No.2 rejecting petitioner's furlough leave.

2. The petitioner is undergoing sentence of life imprisonment and had applied for furlough leave on 23rd April, 2022. His application came to be rejected by impugned order for the reason that he twice overstayed previous furlough and parole leave and was required to be arrested.

3. There is no dispute about the fact that the petitioner was released on furlough leave on previous two occasions and at both the times

he did not surrender to the jail authorities on the due date and was required to be arrested and brought back to the prison. The impugned order indicates that he was arrested in the year 2008 and since then he is refused furlough leave.

4. The Prisons (Bombay Furlough and Parole) Rule, 1959 (short 'Rules') provides under Rule 4 for eligibility of prisoners for furlough. According to which all Indian prisoners, except from categories (1) to (21) and whose annual conduct reports are good are said to be eligible for furlough. The relevant exceptions applicable to present case are Rule 4(4) and 4(10) which reads thus :-

“4. Eligibility for furlough.-

(4) Prisoners whose release is not recommended in Police Commissionerate area by the Assistant Commissioner of Police and elsewhere, by the Deputy Superintendent of Police on the grounds of public peace and tranquility;

(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;”

5. Rule 1(A) of the Rules spell objective therefor, which reads thus :-

1(A). Objective :-

Furlough and parole leaves to inmates are progressive

measures of correctional services. The objectives of releasing a prisoner on leave are :-

- (a) To enable the inmate to maintain continuity with his family life and deal with family matters,*
- (b) To save him from evil effects of continuous prison life,*
- (c) To enable him to maintain and develop his self-confidence,*
- (d) To enable him to develop constructive hope and active interest in life.”*

6. In case of ***Pralhad D. Gajbhiye Vs. State of Maharashtra, 1994 Mah.L.J. 1584***, while underlining the purpose of furlough, Division Bench of this Court has made following observation :-

“(i) It is now well settled that furlough and parole have two different purposes. Furlough is a matter of right whereas parole cannot be claimed as a matter of right. Furlough is to be granted periodically under Rule 3 of the Furlough Rules and the principal object of grant of furlough is to enable the prisoner to have family association and to avoid ill-effects of continuous prison life. While undergoing sentence, in according with the Furlough Rules, a prisoner is accorded social inter-action, man being a social animal. Social life is brought into existence periodically for a prisoner by providing furlough. Furlough is not provided or granted for any particular reason and if he is not illegible under Rule 4 of the Furlough Rules, furlough has to be granted and even if a disqualification is there under Rule 4, still it is not necessary that grant of furlough shall be refused.

(ii) The scheme of grant of furlough is that after a convict has been sentenced, on completion of a particular period of

imprisonment undergone, he should be provided to have a social inter-action with an intention that he forgets bitterness and sufferings for a while.”

7. In the instant case, application made by the petitioner is rejected on sole ground that in the year 2014 as well as 2015, while on furlough and parole leave, he over stayed by 35 and 1125 days respectively. It is, therefore, held that prisoner is not likely to surrender to jail after completion of leave. This order indicates that practically forever the concerned authority has taken decision to deny any leave to the petitioner. No doubt, Rule 4(10) disqualifies the prisoner for leave if he overstays furlough or parole leave. The question falls for consideration is as to whether the rule is mandatory, to deny leave permanently.

8. Division Bench of this Court in case ***Sitaram Rajaram Deokar Vs. Deputy Inspector General of Prison, East Nagpur & Anr., 2013 BCI 1253***, has observed that -

“6. The petitioner was earlier released on furlough on 10th June, 2011 for two weeks but he had not surrendered voluntarily on the scheduled date and he was arrested by the police and brought back to the prison. Respondent No.2 has relied on the provisions of Rule 4(10) of the Prisons (Bombay Parole and Furlough), Rules, 1959 to reject the application of the petitioner on the ground of the above mentioned default on the part of the petitioner. The

provisions of Rule 4(10) of the Prisons (Bombay Parole and Furlough) Rules, 1959 are considered in the case of Bhikhabhai Vs. State reported in AIR 1987 Gujarat 136 by Full Bench of Gujarat High Court and it is held that the word shall occurring in Rule 4 of the Rules is directory and not mandatory. The Full Bench of the Gujarat High Court in the above referred Judgment has laid down that the prisoner who commits default as contemplated by the provisions of Rule. 4(10) of the Prisons (Bombay Parole and Furlough) Rules, 1959 is not totally ineligible for being released on furlough and his application has to be considered on merits. The impugned order shows that the petitioner has undergone punishment for the period of three years ten months and one day at the time of making of the application.”

The law on the point is fairly settled that Rule 4(10) is discretionary and not mandatory. Thus in all cases the furlough leave cannot be rejected for overstaying. Each case shall be considered on its own merits.

9. Here in this case, after his arrest petitioner was brought to the prison and since then five years period has lapsed. The purpose for release of prisoner on furlough is to allow him to mix in the society so that when he comes out of jail on serving entire term of sentence, he has connection with society wherein he would live for rest of his life. In the event prisoner is kept away from society, would not only have adverse effect on

him but may create issues/problems to the society. This will lead to frustrate the whole purpose of furlough and parole leaves. Thus, petitioner cannot be denied furlough leave forever by treating Rule 4(10) as mandatory.

10. Apart from this, there is nothing on record to indicate that the conduct of the petitioner in jail was objectionable. Similarly, we find no substance in objection raised by learned A.P.P. on the ground that there is likelihood of breach of public peace and tranquility. Records indicate that except for the letter of the complainant dated 02nd December, 2016 raising apprehension about danger to life, there is absolutely no material on record to indicate that the petitioner was directly or indirectly involved in threatening the complainant or witnesses as claimed. Moreover, the impugned order indicates that the furlough leave was rejected only on the ground that the petitioner was not likely to return as contemplated under Rules 4(10) and 4(20) of the Rules and not for any other reason.

11. In our considered view, the time lapse between the last default and the application made by the petitioner ought to have been taken into consideration by the authorities, in the light of object of grant of leaves to the prisoners. So also overall conduct of the petitioner could not have been ignored by Authority. According to us, therefore, the impugned order dated 30th September, 2022 cannot sustain. The matter deserves to be remanded

back to the respondents for fresh consideration and decision keeping in mind the aim and object of Rules and necessity to grant periodical leave to the prisoners, after ascertaining their conduct. Respondent Authorities shall take decision within two weeks from the date of receipt of the copy of this order by having due regard to the observations in letter and spirit. Such order be communicated to the petitioner.

12. Criminal writ petition stands disposed of in above terms.

(R.M. JOSHI, J.)

SSD

(SMT. ANUJA PRABHUDESSAI, J.)