

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 909 OF 2023

Aarif S/o. Ayub Salar,
Age:51 years, Occ.:Convict,
R/o. Mujawar Lane, Akkalkot, Solapur.
(At present confined at Kolhapur Central
Prison, Kalamba as Convict No. 6402) ... Petitioner

V/s.

1. The State of Maharashtra,
through Inspector General of Prisons
Pune.
2. Dy. Inspector General (Prison),
Central Zone – Pune.
3. Superintendent of Jail,
Kalamba, Kolhapur. ... Respondents

Mr. Rupesh A. Jaiswal, Adv. for the Petitioner.

Mr. A. R. Kapadnis, APP for the State/Respondent.

Jailor Madhuri M. More, Kolhapur Central Prison.

**CORAM : SUNIL B. SHUKRE &
ABHAY S. WAGHWASE, JJ**

DATED : MARCH 10, 2023

ORAL JUDGMENT : (PER – SUNIL B. SHUKRE, J)

1. Rule. Rule is made returnable forthwith.
2. Heard finally by consent of the parties.
3. Though it is true that in the year 2011, the petitioner when released on Furlough, had overstayed for a period of 331 days, this Court nevertheless directed the authorities to grant the Furlough to the petitioner in Criminal Writ Petition No. 1332/2022 as per order

dated 15/07/2022.

4. This Court had then placed reliance on the view taken by the Division Bench of this Court in the case of *Satish Shankarrao Shinde vs. The State of Maharashtra* (**Criminal Writ Petition No. 1535 of 2019 decided on 26/11/2019**), wherein it was held that

“Rule 4(10) of Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 cannot take away the right/facility of furlough in perpetuity on the ground of overstay.”

Therefore, simply because the petitioner had jumped Furlough in the year 2011, which is quite long back, that by itself would not come in the way of petitioner in availing of Furlough or Parole in the year 2022. This would take us to the other grounds on which the application of petitioner for grant of Furlough is filed i.e. the medical treatment and undergoing surgery of his wife.

5. On going through the impugned order, we find that the opinion has been expressed that it is not necessary for the petitioner to remain personally present near his wife while she is undergoing treatment and surgery, as the petitioner has two daughters and one son aged 20 years, 17 years & 16 years respectively. The opinion so expressed is quite insensitive to say the least.

6. Despite having daughters, a husband would always want to be near his wife while she undergoes surgery and medical treatment and presence of husband for any woman means a lot for her. It helps in speedy recovery of the ailing woman. Therefore, the reasons stated in the impugned order, in our opinion, are not sustainable in law.

6. In the result, we find that the impugned order is bad-in-law and deserves to be quashed and set aside.

7. The petition is allowed. The impugned order dated

21/12/2022 is hereby quashed and set aside.

8. Respondent No. 3 is directed to grant Parole Leave to the petitioner for such days, as he is entitled to and on such conditions as may be reasonably imposed in the discretion of Respondent No. 3.

9. The compliance of this order shall be made by Respondent No. 3 within two weeks from the date of receipt of a copy of this order.

10. Rule is made absolute in the above terms.

11. No costs.

12. Petition is disposed of accordingly.

[ABHAY S. WAGHWASE, J.]

[SUNIL B. SHUKRE, J.]