



IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 581 OF 2022.

Naresh Kisan Wanjari – C-3718
Aged about 52 years,
resident of Central Prison, Amravati
District Amravati.

... **PETITIONER.**

VERSUS

Divisional Commissioner,
Amravati Division, Bypass Road,
Camp, Tehsil Amravati and
District Amravati 444602.

... **RESPONDENT.**

Mr. S.R. Jaiswal, Advocate for the Petitioner.
Ms N. Tripathi, A.P.P. for the Respondent.

CORAM : VINAY JOSHI AND
M.W. CHANDWANI, JJ.

DATE : NOVEMBER 02, 2023.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Rule. Rule made returnable forthwith. Heard finally by

Rgd.

consent of the learned Counsel for the parties.

2. This petition filed under Article 226 of the Constitution of India raises a challenge to the order dated 04.03.2022 passed by the Divisional Commissioner, Amravati rejecting petitioner's claim for regular parole for 45 days. The petitioner came to be convicted by the Court of Sessions for the offence punishable under Section 302 of the Indian Penal Code in Sessions Case No.6/2006, and was ordered to suffer life imprisonment.

3. The petitioner has completed 14 years of actual imprisonment in jail. The petitioner has applied for regular parole. The Divisional Commissioner, Amravati called for the police verification report, which was adverse. It is informed that in past, as and when the petitioner was released on parole or furlough, he never surrendered in time i.e. within the stipulated period. It was expressed that considering the past history, there was every likelihood of petitioner going absconded and thus, it is not desirable to release the petitioner on parole. In view of such report, the Divisional Commissioner has declined to grant regular parole by

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quoting Rule 4[10] read with Rule 19[3] of the Prison (Furlough and Parole) Rules.

4. Being aggrieved and dissatisfied with the said order, the petitioner has invoked writ jurisdiction of this Court. The respondent has resisted the petition by filing reply. It is contended that in view of Rule 4[10] of the Rules, a prisoner who fails to surrender to prison in time, is not entitled for further release on parole or furlough. It is stated that provisions of Rule 19[3] of the Rules are applicable for regular parole also.

5. Since denial of regular parole was on account of Rule 4[10] pertaining to late surrender, we have directed the respondent to file a chart showing entire history about prior release. It reveals that in past the petitioner has applied for regular furlough on 8 occasions, however, he was released on 3 occasions only. Rest of his applications were rejected. At the time of first release in the year 2008, the petitioner surrendered late by 304 days, on second occasion, in the year 2012 he surrendered late by 433 days and on third occasion, he surrendered late by 124 days, rather was brought

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by arresting him. The petitioner has applied for parole on 6 occasions out of which only twice he was released on parole. In the year 2011, he surrendered late by 150 days and in the month of September, 2020 on account of death of mother, he surrendered late by 4 days.

6. True, while the petitioner was released on furlough or parole leave, each time he did not surrender in time i.e. on due date, and took considerable time. The learned Counsel for the petitioner submits that rejection of parole or furlough leave on account of late surrender on earlier occasion cannot be sole ground for denial. It is submitted that due to belated surrender, the authorities have taken action of cut in remission and therefore, on said count again petitioner cannot be penalized. In this regard reliance is placed on the decision of this Court in case of **Shrikrushna Shripat Billewar .vrs. The D.I.G. Prisons (E)(R) Nagpur and another – 2014 All MR (Cri) 1829**. The petitioner has further relied on the decision of this Court in case of **Anilkumar @ Lapetu Ramshakal Sharma .vrs. The State of Maharashtra and others – Criminal Writ Petition No.3275/2021 (Bombay) decided on 06.10.2021**, wherein this Court

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has considered the aspect of late surrender, registration of crime during the release period, however, considering the long standing incarceration, has granted furlough leave. Likewise, reliance is placed on the decision in cases of [1] **Sachin Kashinath Ingle .vrs. State of Maharashtra and another – Criminal Writ Petition No.27/2016 decided on 16.03.2016**, [2] **Sachin Kashinath Ingle .vrs. State of Maharashtra and another – 2017 All MR (Cri) 2889**, [3] **Kisan Soma Rathod .vrs. The State of Maharashtra and another – 2017 All MR (Cri) 3561** and [4] **Arun Gulab Gawli .vrs. Divisional Commissioner, Nagpur and others – 2020 [6] Mh.L.J.(Cri) 254**, to support the same stand.

7. The petitioner has already undergone actual imprisonment of 14 years which is significant. On analyzing of the chart, it reveals that the last release was on emergency death parole when the petitioner surrendered late by 4 days. Considering the peculiar case for death parole that cannot be considered. Besides that the last release of petitioner on furlough or parole leave was in the year 2015, when he surrendered late by 124 days. By the time the period of next 8 years has gone, and therefore, we do not see the

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reason of late surrender to be substantial one. The petitioner has produced copy of reply received under Right to Information Act to contend that on either of the release he has not committed any offence. True, said information supports petitioners contention that during the period from 2005 to 2020 as and when he was released on furlough or parole leave, no offence is registered against him. Considering the said aspect and particularly the line of decisions which we have referred above, we have no hesitation to release the petitioner on regular parole, hence the following order.

ORDER

- (1) Criminal Writ Petition is allowed and disposed of.
- (2) The impugned order dated 04.03.2022 passed by the Divisional Commissioner, Amravati Division, Amravati is hereby quashed and set aside. The petitioner-convict namely Naresh Kisan Wanjari is ordered to be released on regular parole on usual terms and conditions, which the Authority may deem fit.
- (3) Rule is made absolute in aforesaid terms.

JUDGE

JUDGE