

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 435 OF 2023

PETITIONER : Kiran Arjun Singh Rathod (C-5747)
(In Jail) Aged about 29 years, Occ. : NA
R/o Baradtanda, Akola Bazar,
Distt. Yavatmal.

V E R S U S

RESPONDENTS : 1. Deputy Inspector General Prison
(East Region), Nagpur.

2. Superintendent of Jail,
Central Prison, Amravati.

Ms. Ratna Singh, Advocate for petitioner.
Mrs. N. R. Tripathi, Additional Public Prosecutor for respondent Nos.1
and 2.

CORAM:- VINAY JOSHI AND
VALMIKI SA MENEZES, JJ.
DATED : 01/08/2023.

ORAL JUDGMENT : (PER VINAY JOSHI, J.) :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of learned counsel appearing for the parties.
2. The petitioner was convicted for the offence punishable under Section 307 of the Indian Penal Code, and is suffering the sentence imposed by the Convicting Court. The petitioner has undergone actual imprisonment of 3 years and 27 days. The petitioner applied for furlough leave of 28 days vide application

dated 04/01/2023, however, it was rejected vide impugned communication dated 19/05/2023. The reason put-forth for rejection is about petitioner's late surrender by 55 days when he was earlier released on special Covid parole leave.

3. Learned counsel appearing for petitioner would submit that though Rule 4(10) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, "the Rules") precludes for grant of furlough, on defaulted to surrender on earlier release, however, the said Rule is directory and not mandatory. To substantiate said contention, reliance is placed on the decision of Gujarat High Court, in the case of **Bhikhabhai Devshi Vrs. State of Gujarat and others**, reported in **AIR 1987 Gujarat 136**. In said decision, Full Bench of Gujarat High Court has considered the penal provision for late surrender vis-a-vis the Rule 4(10) of the Rules. In that context, it has been observed that the said Rule is of directory nature and discretion vests with the authority while considering application for furlough on merits. It is also held that such application cannot be rejected at the threshold on account of Rule 4(10) of the Rules.

4. The petitioner's learned counsel would submit that earlier, petitioner was released on Covid Emergency Parole for 45

days. He returned on due date, however, Prison Authorities have asked him to return later due to insurgence of Covid, but did not intimate the date. The petitioner later on surrendered to the Jail. It is brought to the notice that though there is delay of 55 days, however, petitioner at his own surrendered meaning thereby, he was not brought by arrest. Having regard to the facts, there is no likelihood of abscondence of petitioner's late surrender. Already action has been initiated against the petitioner for late surrender under Section 48-A of the Prisons Act, 1894.

5. Having regard to the above facts, we find no justification in rejecting the parole leave for petitioner. In view of that, petition is allowed. We hereby quash and set aside the communication dated 19/05/2023. We direct the respondents to release the petitioner on furlough leave, as permissible under law on usual terms and conditions. Necessary consequential order shall be passed within two weeks from the receipt of communication of this order.

6. The petition stands disposed in above terms.

[VALMIKI SA MENEZES, J.]

[VINAY JOSHI, J.]

Choulwar