



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1335 OF 2024

Arun Shivdas Jagtap,
Age-57 years, Occu:Convict,
R/o-Boradi, Shirpur, District-Dhule,
At present confined at Nashik
Central Prison, Jail Road, Nashik
as Convict No.5927.

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Additional Director
General of Prisons (Maharashtra),
- 2) Dy. Inspector General (Prison),
Central Zone, Aurangabad,
- 3) Superintendent of Jail,
Nashik Road, Central Prison, Nashik.

...RESPONDENTS

...
Mr. D.V. Soman Advocate for Petitioner (**appointed**).
Mr. A.D. Wange, A.P.P. for Respondent Nos. 1 to 3.
...

CORAM: SMT. VIBHA KANKANWADI AND
S.G. CHAPALGAONKAR, JJ.

DATE : 10th OCTOBER, 2024

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Present Petition has been filed on behalf of the convict

wherein prays for quashing and setting aside order passed by respondent Nos.1 and 2, dated 5th January 2024 and 6th March 2024 respectively, and to grant him furlough leave or to allow his early release, taking into consideration the remission.

2. Heard learned Advocate Mr. Soman appointed to represent the petitioner and learned APP Mr. Wange for respondents.

3. It is to be noted that the petitioner came to be convicted in Sessions Case No.64 of 2004 by the learned Sessions Judge, Dhule on 9th March 2006 for the offence punishable under Sections 302, 498-A of the Indian Penal Code. He has been sentenced to suffer imprisonment for life. He has undergone 18 years and one months imprisonment and including remission 11 years and five months. He had made an application for furlough leave but it was rejected by respondent No.2 on 5th January 2024 and his appeal has been rejected by respondent No.1 on 6th March 2024, mainly on the ground that he had surrendered late by 3534 days. According to the petitioner, he has been punished for the said act by removing his name from remission register and since last four years he has never been released on furlough or parole. He submits that he is suffering from severe ailments and had undergone angiography during his period of overstay.

Rule (10) of the Maharashtra Prisons (Bombay Furlough and Parole) Rules is not mandatory and still the respondents can grant leave to the prisoner.

4. It was the jail petition and therefore, we had appointed learned Advocate Mr. D.V. Soman to represent the petitioner. Heard learned Advocate Mr. Soman for petitioner as well as learned APP Mr. Wange for respondents.

5. The first and foremost fact which is coming from the jail authorities is that the petitioner had been granted leave on three occasions. When he was granted leave on 9th January 2008, he had reported late by 582 days. Prior to that he was granted leave between 1st March 2007 to 1st April 2007, i.e. initially for fourteen days and it was got extended by fourteen days. At that time also the petitioner reported late by 2 days. Thereafter when leave was granted on 16th June 2021 for 14 days, he was required to be brought by arrest in another offence, on 17th March 2021. The overstay of the petitioner was 3534 days. Certainly, his name has been taken off from the remission register permanently. Now, also his police report is adverse. The petitioner was involved in offence under Section 172 of the Indian Penal Code and he was released on bail by the learned

Judicial Magistrate First Class, Shirpur on 7th November 2009. Thereafter he is also involved in R.C.C. No.8 of 2010 i.e. Crime No.240 of 2009 for the offence punishable under Sections 452, 323, 504, 506 read with Section 34 of the Indian Penal Code, pending before the learned Judicial Magistrate First Class, Shirpur. He is also involved in Crime No.322 of 2013 under Section 224 of the Indian Penal Code, pending before the learned Judicial Magistrate First Class, Shirpur. The prison authorities were, therefore, justified in rejecting the application of the petitioner, taking into consideration the overstay of the petitioner for 3534 days and the fact that possibility of the overstay cannot be ruled out. Therefore, presently, no case is made out for interference under the constitutional powers of this Court. However, we hope and trust that the respondents would consider for taking the name of the petitioner on the remission register in view of the circulars of respondent No.2, after about five years or six years, as the case may be. Further, we also hope that the respondents would consider the application for leave by the petitioner when the occasion arises, not only humanitarian ground but also taking into consideration the law laid down by the Full Bench of Gujarat High Court ***Bhikabhai Devshi vs. State of Gujrat, [AIR 1987 (GUJ) 136]***, which has

been followed in subsequent decisions by this Court, and would not reject the same only on the ground of Rule 4(10), 4(20) of the Maharashtra Prisons (Bombay Furlough and Parole) Rules.

6. The Writ Petition stands dismissed.

7. Fees of the learned Advocate Mr. D.V. Soman, who is appointed to represent the cause of the petitioner is quantified at Rs.7,000/-, to be paid by the High Court Legal Services Sub Committee, Aurangabad.

[S.G. CHAPALGAONKAR]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/OCT24