

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.164 OF 2024

Salim Beg Umar Beg .. Petitioner
Versus
The State of Maharashtra .. Respondent

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Mr.Amit A. Mane for the Petitioner.
Mr.J.P.Yagnik, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 21st JUNE, 2024

P.C:-

1. This is one more case, where the prisoner is refused his entitlement of furlough leave, by invoking Rule 4(10) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, **"Rules of 1959"**), on the ground of his late surrender on three occasions; by delay of 533 days, when he was released in the year 2005, 592 days when he was released in the year 2008, and 783 days, when he was released on 06/06/2011. By taking recourse to Rule 4(10), the benefit is refused to be extended to him.

2. The learned A.P.P. Mr.Yagnik submits that the prisoner is transferred to open jail, Dhule on 29/03/2024. This aspect is taken note of, but worth it to note that as far as the application for grant of furlough leave under Rule 4 is concerned, it will

have to be preferred to the same authority, which has rejected his application, despite the fact that he is housed in open prison.

3. In light of the well settled position of law, based upon the decision of the Full Bench of the Gujarat High Court in the case of *Bhikhabhai Devshi Vs. State of Gujarat*¹ as well as the subsequent decisions of this Court, since it is categorically held that Rule 4(10) of the Rules of 1959 does not create an absolute bar in consideration of the application for furlough leave only on the ground that in the past, the prisoner/convict has surrendered by some delay, we deem it appropriate to request the learned A.P.P. Mr.Yagnik to place the aforesaid decisions before the D.I.G. alongwith the copy of the order passed by us in *Writ Petition No.1855 of 2024 (Jamil @ Jammu s/o Abdul Aziz Salar Vs. The State of Maharashtra & Ors.) decided on 18/06/2024*, with an expectation that the Prison Authority shall take into account the law laid down on the point and shall not perfunctorily reject the application on the ground of late surrender.

In this case, we expect the authority to re-consider its decision, in the light of the well settled position of law, within four weeks from today.

With the aforesaid reasoning, the Writ Petition stands disposed off.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)

1 1986 Cj (Guj) 39