

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL WRIT PETITION NO.2486 OF 2024**

|                              |   |    |             |
|------------------------------|---|----|-------------|
| Vitthal s/o Hanumantrao Bore | ] | .. | Petitioner  |
| vs.                          |   |    |             |
| State of Maharashtra & Ors.  | ] | .. | Respondents |

Mr.Rupesh Jaiswal for the Petitioner.  
Ms.Sharmila Kaushik, APP for the State.  
Ms.Suvarna Chorge, Jailor Gr II, Nashik Jail, present.

**CORAM : BHARATI DANGRE &  
MANJUSHA DESHPANDE, JJ**

**DATE : 22<sup>nd</sup> JULY, 2024.**

**P.C.**

1] The impugned order dated 11.10.2023 has refused the benefit of furlough leave to the Petitioner Convict on various grounds.

The foremost ground on which his request is rejected is Rule 4(10) of the Prisons (Mumbai Furlough and Parole Rules) Rules, 1959, which cast an embargo upon release of a Prisoner who has surrendered late than the date on which he was supposed to surrender, on being released on parole or furlough leave.

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2] In the case of the Petitioner, earlier he was released on furlough leave, however, he surrendered after a delay of 128 days.

Another reason cited in the impugned order is the negative police report as the witnesses whose statements are recorded have stated that, if he is released on parole/furlough leave, they may face danger to their life.

In addition, the learned APP would advance one more aspect to his rejection being that the co-accused who was released on Covid bail, have absconded and therefore, there is every likelihood that he may also abscond, if released on parole/furlough.

3] In the wake of the consistent view adopted by this Court, that Rule 4(10) shall not act as detriment to the Prisoner/Convict, if he fails to surrender in time and there is delay in the wake of catena of decisions taking a consistent view that this Rule cannot be construed as a permanent embargo, upon a person being released on parole/furlough by availing the benefit conferred upon him, merely on the ground of this provision, we are not impressed that this provision would have created an obstacle in considering his release, particularly since the year 2019 he has not availed any parole/furlough leave.

Similarly another objection and negative police report, based on the witness's statements that his release may pose danger to their life,

also deserve to be brushed aside, as in the past also the Petitioner was released on parole/furlough and it is not the case of the prison authority that except for this late surrender, he had in any manner attempted to threaten the witnesses.

4] In any case, the Petitioner is undergoing life imprisonment on being convicted for the offence under Section 302 and 307 of the IPC and has already undergone 11 years 4 months and 26 days of imprisonment as on 1.10.2023.

Since the police report do not inspire confidence and Rule 4(10) cannot be looked as a complete bar for not releasing him on furlough leave, as per his entitlement and subject to the conditions which the prison authorities deem appropriate to impose, the Petitioner is directed to be released on 28 days furlough leave, on the compliance of necessary conditions, as per the prevailing Rules.

Writ Petition is allowed in the aforesaid terms.

**[MANJUSHA DESHPANDE, J.]**

**[BHARATI DANGRE, J.]**