



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

Criminal Writ Petition No.364/2024

(Sachin V Deputy Inspector General (Prison) (East), Nagpur and another)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Mir Nagmaan Ali, Advocate for petitioner.
Mrs. Tripathi, APP for respondents.

CORAM : Smt. Vibha Kankanwadi & Mrs. Vrushali V. Joshi, JJ
DATE : 21-06-2024.

The present petition has been filed under Article 226 of the Constitution of India, invoking the constitutional powers of this Court for challenging the order dated 14-03-2024 passed by respondent no.1, thereby rejecting the furlough leave to the petitioner.

2. Heard Mr. Mir Nagman Ali, learned Advocate for the petitioner and Mrs. Tripathi, learned APP for the respondents.

3. The petitioner is undergoing sentence for the offence punishable under Sections 302 and 323 of the Indian Penal Code (for short, "IPC"). He had filed application for furlough leave on 16-01-2024. However, the said application came to be rejected on 14-03-2024, on the ground that an offence has been registered when he was on leave earlier in 2021. Offence vide Crime No.360/2021 registered with Butibori Police Station under Sections 307, 504, 506 read with Section 34 of the IPC. It is also stated that

in the past, the petitioner has not reported back to the prison within time.

4. Learned APP strongly submits that in view of the fact that when the petitioner was released on leave earlier in the year 2021, he has committed offence and possibility cannot be ruled out that he would disturb the public peace by committing any offence. Further, when he has reported late back to the Prison, in fact was required to be brought by arresting, therefore, he is not entitled to furlough leave in view of Rule 4(5)(10)(20) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, "Prison Rules"). Learned Advocate for the petitioner had tried to give explanation for late reporting of the petitioner in the past.

5. Affidavit has been filed by the Deputy Superintendent, Central Prison, Nagpur Ms. Deepa Agey, giving the history of furlough leave is granted in the past to the petitioner and when he has surrendered i.e. late. It also appears that for late surrender in the year 2016 by 1600 days, offence under Section 224 of the IPC was registered vide Crime No.3159/2013.

6. It is to be noted that in the past it appears that the petitioner had reported late, but for that purpose there are rules with the prison Authorities under which punishment can be awarded. So also it appears that the said offence under Section 224 of the IPC has

been registered. The present status of that case has not been stated in the affidavit in reply. No doubt, it appears that in the year 2021, when the petitioner was on furlough leave, offence under Sections 307, 504, 506 read with Section 34 of the IPC and Section 3/25 of the Arms Act has been registered against the petitioner. However, it cannot be said that, that will have to be taken as a hurdle. The case is still pending and innocence of the accused is required to be presumed till the offence is proved as per law. Mere apprehension that the petitioner would commit similar offence cannot be a ground for rejecting the application.

7. We, therefore, take the present case as a fit case where the impugned order deserves to be quashed and set aside and to direct the respondent no.1 to grant furlough leave in accordance with law. Hence, the following order is passed.

- (i) Writ Petition stands allowed.
- (ii) The impugned order dated 14-03-2024 passed by respondent no.1 DIG, Prison (East), Nagpur is hereby quashed and set aside.
- (iii) The respondent no.1 is directed to grant furlough leave on the basis of application dated 16-01-2024 to the petitioner for such period as is permissible under the law and by imposing suitable conditions.

- (iv) Such order to be passed within a period of 15 days from today.

(Mrs. Vrushali V. Joshi, J.)

(Smt. Vibha Kankanwadi, J.)