



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.171 OF 2025

Ritesh Hiranman Gawande,
Age 52 yrs., Occ. Prisoner,
R/o C-8328, Harsool Central Jail,
Chhatrapati Sambhajinagar.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai – 32.
- 2 The Special Director General of Police (Prison),
Central Prison, Harsool,
Aurangabad, Dist. Aurangabad.
- 3 The Superintendent of Prison,
Central Prison, Harsool,
Tq. & Dist. Aurangabad.

... Respondents

...

Mr. M.M. Parghane, Advocate for petitioner
Mr. A.D. Wange, APP for respondent Nos.1 to 3

...

CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.

RESERVED ON : 21st MARCH, 2025

PRONOUNCED ON : 23rd APRIL, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present petition has been filed for following relief :

“(C) By issuing appropriate writ of Certiorari or any other Writ, Order or direction, to refund the surety amount of Rs.25,000/- confiscated by respondent No.3 – The Superintendent of Prison, Central Prison, Harsool, Tq. & Dist. Aurangabad for late surrender for two days on death parole.”

2 The petitioner is a convict, who is undergoing his sentence of imprisonment for life, for the offence under Section 302 of the Indian Penal Code at Harsool Jail, Aurangabad. He was released on death parole on 20.09.2024 for seven days. He was supposed to return back to the jail on 26.09.2024. However, he has surrendered late by two days i.e. on 28.09.2024. A show cause notice was issued to him on 22.10.2024. He gave his reasons for the late surrender in writing on 03.10.2024. Despite the explanation respondent No.3 has confiscated the deposit amount of Rs.25,000/- which was paid by petitioner. It is unjust and arbitrary. In fact, in his explanation he had mentioned that unfortunately he had forgotten the gate pass and, therefore, the guard had not allowed him to enter. Ultimately he was required to make a phone call. There is only old mother in his house and she was not able to operate WhatsApp, upon which, she could have sent the photo of the gate pass. She managed it with the help of one auto driver

residing nearby. In fact, petitioner's father had expired and, therefore, he was under mental shock and in that process he had forgotten to bring the gate pass. But for that purpose confiscation of entire amount was not appropriate.

3 Learned Advocate for petitioner after giving above story relies on the decision in **Navnath Dattatraya Waghmare vs. The State of Maharashtra and others** in Criminal Writ Petition No.927 of 2018 decided by this Court on 08.01.2019, whereby it was held that the explanation tendered by such inmate should be considered sympathetically and forfeiting of the entire amount cannot be the answer in such situation.

4 Learned APP relies on the affidavit of Mr. Dattatraya Ganpat Gawade, the Superintendent of Chhatrapati Sambhajinagar Central Prison, who has given details as to how the application of petitioner was allowed and as petitioner surrendered belatedly two days before the prison authority, the show cause notice has been issued, as per the procedure. Reliance has been placed on Government Notification dated 16.04.2018, wherein paragraph 24 provides Provided that, if he does not surrender on due date, the amount of deposit shall be forfeited and the prison authority shall also register a case under Section 224 of the Indian Penal Code. After registering such case, if the prisoner is not arrested, concerned Police Station

shall initiate procedure under Section 82 and 83 of the Code of Criminal Procedure. Then the Notification dated 02.12.2024 gives the procedure to be followed when the prisoner fails to surrender within due date. Learned APP submits that the action taken is proper.

5 The first and the foremost fact to be noted is that the petitioner was released on parole on 20.09.2024 and he was supposed to return on 26.09.2024. Therefore, reliance of respondents on Government Notification dated 02.12.2024 which came into existence after the incident in question cannot be made applicable. Of course, it is on the same line as the Notification dated 16.04.2018. The question is that - Paragraph No.24 Proviso states that if such inmate fails to surrender on due date, then amount of deposit shall be forfeited. Whether in such cases the word 'shall' should be taken as mandatory ? The purpose behind taking such deposit is to have an assurance that the convict/inmate would return within time and when there is a provision that after his return in time if that amount is to be returned back to him, then it will have to be taken as an incentive to the inmate to return/surrender within time. Otherwise he will have to face the action of confiscation of the amount given as cash deposit and also to face the prosecution under Section 224 of the Indian Penal Code, as the said proviso gives directions to the authority to lodge such report. Therefore, in our

considered opinion, the word 'shall' used in the Notification dated 16.04.2018 is not mandatory but would give discretion even to forfeit part of the deposit. The word that has been used in the said Notification 'deposit' which has inherent meaning in it that upon surrender it is returned back to the inmate.

6 Petitioner has given reason that he forgot to bring the gate pass and as except old mother there is nobody in his house, he could not get the photo copy of the same. In his explanation dated 03.10.2024 petitioner has stated that as he had returned around 11.00 p.m. to 12.00 a.m. and had forgotten the gate pass, he was waiting in the waiting area of the Jail. He has also stated that said fact can be confirmed by the Jail Authorities in CCTV footage. In the affidavit the concerned Superintendent of Jail has not stated that he had checked the CCTV to counter check the statement made by petitioner in his explanation. If that precaution would have been taken immediately after the receipt of explanation, the further complications would have been avoided. The Jail Authorities are not supposed to put a finger on the rules strictly, but some rules in some cases can be slightly moulded on humanitarian ground. It appears that final order has not been passed, but taking into consideration the tenor of the affidavit, we take that respondents are in the mood to forfeit the entire amount. Therefore, the act of

confiscating/forfeiting the entire amount of Rs.25,000/- is unjustified. We, therefore, direct respondents to forfeit amount of Rs.2,000/- from the said deposit towards the late surrender by petitioner. Hence, following order.

ORDER

- i) Writ Petition stands allowed.
- ii) Respondent No.2 or 3, who is the appropriate authority, to pass final order regarding forfeiture of amount of Rs.2,000/- only towards surety amount instead of Rs.25,000/-.
- iii) The remaining amount be given back/refunded to petitioner within a period of four weeks from today by following relevant procedure and formalities.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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