

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

17 CRIMINAL WRIT PETITION NO. 598 OF 2025

GANESH LAXMAN PURI

VERSUS

THE ADDITIONAL DIRECTOR GENERAL AND INSPECTOR GENERAL
PRISON AND CORRECTIONAL SERVICES MAHARASHTRA

...

Advocate for the Petitioner : Mr. Prashant Prabhakar Giri (Through
Legal Aid)

APP for Respondent Nos. 1 to 3/State : Mrs. P.R. Bharaswadkar

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

DATE : 04.07.2025

PER COURT :

1. The petitioner by invoking the Constitutional powers of this Court, challenges the order dated 18.09.2024, passed by respondent No. 2 and order dated 18.12.2024 passed by respondent No. 1, thereby rejecting his application for releasing him on furlough leave.

2. Heard learned Advocate Mr. Giri, who has been appointed to represent the petitioner by giving Legal Aid and the learned APP.

3. Perused the affidavit-in-reply filed by Shri Dattatray Ganpat Gawade, Superintendent of Chhatrapati Sambhaji Nagar Central Prison.

4. Facts disclose that the petitioner has been convicted by the learned Additional Sessions Judge, Beed on 23.09.2019 in

Sessions Case No. 77 of 2018 for the offence punishable under Section 302 of the Indian Penal Code and has been sentenced to suffer imprisonment for life. The petitioner is lodged in the Central Prison at Chhatrapati Sambhajnagar. He had applied for furlough leave and the said application was forwarded to the Office of Deputy Inspector General of Prison, Central Region, Chhatrapati Sambhajnagar on 09.02.2024. Police inquiry was done and the report was submitted on 30.07.2024.

5. In the application the petitioner has stated that one Vithal Dhanraj Thombre, resident of Umachiwadi, Taluka Bhum, District Dharashiv, has expressed his willingness to stand as a surety for him but in the police report it was informed that said Vitthal Thombre has refused to stand as surety. It appears that, thereafter, an opportunity was given to the petitioner to suggest name of another person to stand as surety alongwith affidavit in reply. The documents those have been given would show that the petitioner had made an application that he is unable to arrange for another surety and therefore, he be allowed to proceed on leave on bond, as well as minimum cash security. Though the said application appears to have been sent to the Special I.G., of Prison, on 02.09.2024 by the Superintendent of Police, Central Prison, in the said letter itself he has stated that he is not recommending to release of the petitioner on a bond and/or cash security. Alongwith affidavit, there is no final order on the said application/request of petitioner to release him on a bond and/or cash security appears to have been passed. It has been stated that in Government Notification dated 16.04.2018, Rule 6, it is stated that prisoner should not be granted furlough leave unless he can provide suitable surety, who is willing to receive him. The Rules came to be amended with effect from 02.12.2024 and in categorical

terms it is then stated that no prisoner shall be granted furlough or parole leave unless petitioner provides suitable surety willing to receive him and therefore, application was rejected and also appeal has been rejected.

6. At the outset, we will say that, even if we consider Rule No. 6 of Government Notification dated 16.04.2018, though it is stated that prisoner shall not be granted furlough unless applicant has provided suitable surety willing to receive him, it is thereafter, stated that the Police Patil or the Registered Medical Practitioner of Home Town, may be willing and acceptable and they may also be allowed to stand as surety. It can be seen that Rules added on 02.12.2024 came into force when an appeal preferred by present petitioner was pending before respondent No. 1. Therefore, when respondent No. 2 had rejected the application for furlough on 18.02.2024, then it will have to be presumed that earlier Rules were prevailed.

7. In connection with those Rules, it appears that respondent No. 2 has not considered Full Bench decision of this Court in **Dipak s/o Sudhakar Wakalekar Vs. State of Maharashtra and Ors. (2011 ALL MR (Cri.) 1933)**, wherein said Rule No. 6 and special proviso to the same was interpreted as discretionary provision. The proviso was in respect of prisoners in Open Prison. At the appellate stage then amended rules cannot be made applicable because the order which was under challenge under appeal was as per old rules.

8. Another fact that requires to be noted here is that this Court in Criminal Writ Petition No. 332 of 2025 (Narsingh Shankar

Talnikar and Ors. Vs. State of Maharashtra and Ors.), decided on 11.06.2025, has interpreted Rule 24 (1) of new Rules i.e., which came into force by Government Notification dated 02.12.2024. Though this Court refused to quash and set aside Rule 16 (1) of Rule 24 (1) of Rules, 2024 as not voidable of Article 14 and 21 of the Constitution of India, as they are not contrary to the meaning and objects of the Rules as well as contrary to the Full Bench decision in **Dipak s/o Sudhakar Wakalekar** (supra), yet it was interpreted, taking into consideration the other provisions of the new Rules itself, that the word 'shall' has not been used in the notification, in the context of passing of order in respect of surety. It is only stated that the sanctioning authority shall make the order even specified limits, after considering inquiry report and other material. The word 'shall' has to be taken into consideration as 'may.'

9. Thus, taking into consideration the interpretation and the decision, the Sanctioning Authority on furlough as well as parole rules will not be justified in straight way rejecting parole or furlough rules, the basic purpose for which such facility is made available to inmates would get then frustrated.

10. In the present case, the petitioner is in jail, at least since the date of conviction i.e. 23.09.2019. He was not released on any type of leave prior to the application made by him. It would be difficult for him to then get another surety and therefore, the appropriate sanctioning authority ought to have considered taking cash security instead surety. Except on the point of bond that surety named by the petitioner has refused to stand as surety, application could not have been rejected. It was then stated by the petitioner that he is unable to provide surety, the said fact ought to have been

considered. There is no explanation in the affidavit-in-reply, as to why upon said representation forwarded alongwith letter dated 02.09.2024, respondent No. 1 has not passed any final order. We presume that the said application is still pending before the concerned authority and, therefore, we direct respondent No. 2 to decide the said application within a period of one week, on the basis of earlier police report itself, except the fact that named surety has refused to stand as surety. We set aside the order passed by respondent No. 1 dated 18.12.2024. We also direct respondent No. 2 to take note of decision of this court in Criminal Writ Petition No. 332 of 2025 decided on 11.06.2025.

11. With these directions we dispose of the Writ Petition.

(SANJAY A. DESHMUKH)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

mahajansb/