



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.879 OF 2024

Kailash Sopan Jade,
Age 39 yrs., Occ. Convict,
R/o Yashwantnagar, Bhadgaon village,
Dist. Jalgaon.
(At present confined at Nashik Central Prison,
as convict No.10246.)

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through Inspector General of Prisons.
- 2 Deputy Inspector General (Prison),
Central Zone, Pune.
- 3 Superintendent of Jail,
Nashik Road.

... Respondents

...

Mr. R.A. Jaiswal, Advocate (appointed) for petitioner

Mr. V.K. Kotecha, APP for respondent Nos.1 to 3

...

CORAM : SMT. VIBHA KANKANWADI &
ROHIT W. JOSHI, JJ.

DATE : 07th JANUARY, 2025

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

1 The petitioner who is a convict undergoing sentence challenges order passed by respondent Nos.1 and 2 dated 23.01.2023 and 27.04.2023 respectively and prays for direction to respondents to release him on furlough leave.

2 The petition was received from jail and, therefore, by order dated 10.06.2024 this Court provided Legal Aid to the petitioner by appointing Advocate Mr. R.A. Jaiswal, who has then presented a proper memo.

3 Heard learned Advocate for the petitioner. Though the learned APP has prayed for time to file affidavit even today, the same has been rejected. Respondent had the knowledge about filing of writ petition as in the order dated 10.06.2024 it is specifically stated that learned APP seeks time. It appears that till 27.09.2024 the learned Advocate appointed to represent the petitioner had not filed the formal petition in format, but on that day he made a request that he would file the same within a period of one week. Therefore, this Court directed that after the copy is served upon respondents, respondents should file affidavit-in-reply within a period of one week. Thus, from 27.09.2024 State had the knowledge that it is required to

file the affidavit. Copy of the memo has been served on State on 03.10.2024, but till today there are no efforts on behalf of State to file the reply and, therefore, we proceed with the matter.

4 The factual matrix leading to the present matter are that the petitioner was arrested on 17.06.2014 in connection with Sessions Case No.44/2014. He was convicted for the offence punishable under Section 302 etc. of the Indian Penal Code on 12.10.2015. He has been directed to suffer imprisonment for life. According to the petitioner, he has undergone imprisonment of 10 years and 03 months including remission 12 years and 07 months. He had applied for furlough leave, but it can be seen from the impugned order dated 23.01.2023, which has then been confirmed on 27.04.2023, that when the petitioner was released on parole under Pandemic situation Covid-19 on 22.05.2020, he had not surrendered to the jail voluntarily, but was required to be brought to jail through police after delay of about 29 days. Therefore, both the authorities say that the case of the petitioner is not within the Rule No.4(10) of the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018. Reliance has been placed by the authorities on Government Notification dated 16.04.2018, whereby the Government has laid down by way of amendment that the prisoners who have at any time escaped or attempted to escape from lawful

custody or have defaulted in any way from surrendering themselves at the appropriate time after release on parole or furlough, such persons are not entitled to be released on parole or furlough leave. Important point to be noted is that in the order itself it is mentioned that when the petitioner has surrendered belatedly, offence under Section 224 of the Indian Penal Code was registered vide Crime No.188/2022. The said matter was taken up before learned Judicial Magistrate First Class, Bhadgaon, Dist. Jalgaon by Regular Criminal Case No.137/2022. By Judgment dated 11.07.2022 the petitioner has been convicted for the offence punishable under Section 224 of the Indian Penal Code and has been sentenced to suffer imprisonment for three months and pay fine of Rs.5,000/-, in default to suffer simple imprisonment for 15 days. The said conviction or sentence was supposed to be undergone along with his present conviction under Section 302 of the Indian Penal Code. That means, he has already undergone the said sentence. When he made application for furlough leave by rejecting the application he cannot be allowed to suffer twice.

5 The learned Advocate appearing for the petitioner has relied on **Bhikabhai Devshi vs. State of Gujarat** [1986 CJ (Guj) 39], wherein it has been interpreted that the word used 'shall' in Rule 4(10) of the said Rules will have to be read as 'may' and directory. It is the Full Bench decision of the

Hon'ble Gujarat High Court, but it is under the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018. In strong words this Court at Principal Seat in **Subhash Pralhad Ghogare vs. The State of Maharashtra and others** in Criminal Writ Petition No.1926 of 2024 decided on 20.06.2024 and **Pratap Tukaram Godse vs. The State of Maharashtra and others** in Criminal Writ Petition No.2595 of 2024 decided on 01.07.2024 has observed that orders are passed by Jail Authorities without considering the decisions of Full Bench of Gujarat High Court in **Bhausahab Ankush Gade vs. The State of Maharashtra and others** in Criminal Writ Petition No.1271 of 2024 decided on 10.10.2024. We had also set aside such rejections of furlough leave, in which reliance was placed on Rule 4(10) of the said Rules. The rejection in this case only on the point that he has surrendered belatedly ought not to have been taken as mandatory in view of Rule 4(10) of the said Rules. When the petitioner's application was considerable and was fulfilling the criterion, it ought to have been allowed. With these observations we pass following order.

ORDER

- i) Criminal Writ Petition stands allowed.
- ii) Impugned orders dated 23.01.2023 and 27.04.2023 passed by

respondent Nos.1 and 2 respectively stand quashed and set aside.

iii) Petitioner be released on furlough leave for admissible days, which respondent No.2 (Deputy Inspector General (Prison), Central Zone, Aurangabad) to clarify upon executing two sureties in addition to his own bond to the extent of Rs.25,000/- (Rupees Twenty Five Thousand only).

iv) Needless to clarify that petitioner once released on furlough, shall report to the Police Station, within whose jurisdiction he intends to stay, on every Monday and Thursday, between 10.00 a.m. to 11.00 a.m., during the period of leave.

v) Petitioner to furnish entire details of his stay during the said period of leave to the prison authorities as well as to the said Police Station.

vi) Fees of the appointed Advocate is quantified at Rs.7,000/- (Rupees Seven Thousand only), to be paid by High Court Legal Services Sub Committee, Aurangabad.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)

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