



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

17 CRIMINAL WRIT PETITION NO.904 OF 2024

Ashwin Bansi Sapkale,
Age 49 yrs., Occ. Convict,
R/o at present confined at Nashik Central Prison,
as convict No.4524.)

... Petitioner

... Versus ...

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

... Respondents

...

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

Mr. A.D. Wange, 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

orders passed by respondent Nos.1 and 2 dated 31.10.2023 and 27.12.2023 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 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 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 somewhere in the year 1999. He came to be convicted by Sessions Judge, Mumbai in Sessions Case No.438/2000 on 17.03.2004, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and has been directed to undergo imprisonment for life. Now, according to petitioner, he has undergone imprisonment for 10 years and 03 months approximately including remission for 12 years and 07 months. He had applied for furlough leave, but it was rejected vide order dated 31.10.2023 and the appeal has been rejected on 27.12.2023. The ground for rejection is that he had surrendered late by 3253 days. According to him, he has been prosecuted vide Crime No.471/2013 under Section 224 of the Indian Penal Code by Samata Nagar Police Station. It has been submitted on behalf of petitioner that in view of decision in **Bhikabhai Devshi vs. State of Gujarat** [1986 CJ (Guj) 39] the Full Bench had interpreted that the word used 'shall' in Rule 4(10) of the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018 is required to be read as 'may' and directory. When he has undergone substantial sentence, the application ought to have been allowed.

5 We are in agreement that as regards the legal position that has been laid down by the Full Bench of Hon'ble Gujarat High Court is

concerned, it has been then followed by our own High Court in several other cases also. Therefore, certainly, the word used in Rule 4(10) of the said Rules 'shall' is required to be read as 'may' and directory, but then at the same time, it cannot be interpreted as 'must' in each and every case. In every case irrespective of previous record when such parole or furlough application is made then it would be positively considered, is not the decision of any Court. Certainly, reasons are required to be considered, so also the other circumstances including the duration of the late surrender. The petitioner has not stated, as to whether he has been convicted for the offence under Section 224 of the Indian Penal Code. The late surrender of petitioner by 3253 days is huge and he has not given the reason as to why he had taken so much of time to surrender himself before the jail authorities. It can be seen from the impugned order that he had surrendered late by 34 days in 2007, 60 days in 2009, 01 day in 2005, 105 days in 2007, when he was released on either parole or furlough leave. He was released on parole on 26.06.2012, but he surrendered himself only on 30.07.2021 that is by delay of 3253 days. That means, the conduct has been taken into consideration by the authorities while rejecting the application. Therefore, this is not a fit case where we need to interfere by using our constitutional powers. Hence, following order.

ORDER

- i) Writ Petition stands dismissed.
- ii) 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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