



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO.789 OF 2025**

Sanjay s/o Sahebrao @ Natha Pawar  
Age: 48 years, Occu.: Convict,  
R/o. At present confined in Harsool  
Jail, Chhatrapati Sambhajinagar.  
Permanent Address Village Rampuri,  
Beside Pandurang Temple, Tq. Gevrai,  
District Beed.

**.. Petitioner**

***Versus***

1. State of Maharashtra  
Through Superintendent  
Harsool Jail, Chhatrapati Sambhajinagar
2. State of Maharashtra  
Through D.I.G. Prisons,  
Central Division, Chhatrapati Sambhajinagar.
3. Inspector General of Prison,  
Yerwada, Pune.

**.. Respondents**

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Mr. Rupesh A. Jaiswal, Advocate for the petitioner.  
Mrs. R. P. Gour, APP for the respondents/State.

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

**RESERVED ON : 24 JULY 2025  
PRONOUNCED ON : 19 AUGUST 2025**

**ORDER (Per Smt. Vibha Kankanwadi, J.) :-**

. The petitioner, who is a convict, takes an exception to challenge the order dated 06.03.2025 and 09.05.2025 passed by respondent Nos.2 and 3 respectively whereby they had rejected the application for furlough leave filed by the present petitioner.

2. Heard learned Advocate Mr. Rupesh A. Jaiswal for the petitioner and learned APP Mrs. R. P. Gour for the respondents/State.

3. Learned Advocate for the petitioner submits that the petitioner came to be arrested in 2008 and was under trial prisoner till he was convicted on 30.10.2010 by the learned Sessions Judge, Beed in Sessions Case No.56 of 2009 for the offences punishable under Sections 302, 397, 394, 376, 506 of Indian Penal Code. The imprisonment that has been awarded is life imprisonment till death. According to the petitioner, he has undergone 15 years and 01 month incarceration approximately and including remission, it is 17 years and 7 months. The petitioner on the earlier occasions was released on furlough leave on 05.10.2022, 14.07.2023 and 06.03.2024 respectively and he surrendered himself to the jail authorities in time. Now, when he had applied for grant of furlough leave dated \_\_.09.2024 on the ground that he is entitled to be released on furlough leave, however, in view of the amendment in the Maharashtra Prisons (Furlough and Parole) Rules,

2024 which came into effect on 02.12.2024, as per Rule 4(j) and (l) of the said Government Notification dated 02.12.2024, he is not entitled. The petitioner preferred appeal and in that it has been stated that the police report is negative. Learned Advocate for the petitioner submits that the report of the police being negative was without basis. Earlier three times he was released on furlough leave and at no point of time any offence is stated to have been registered because of any act on the part of the petitioner. The liberty that was granted to the petitioner was never misused by him. Further, the application which he had filed was prior to the coming into force of the amendment and ought to have been dealt with as per the old provisions and not as per the new provisions. He relies on the decision of the Division Bench of this Court in ***Arun Gulab Gawli vs. Deputy Inspector General (Prisons) (East) Nagpur and another, [Criminal Writ Petition No.899 of 2024 decided on 07.01.2025]***, wherein it has been held thus :-

“6. We have appreciated the aforesaid submissions.

Firstly, we are required to deal with the embargo that is created under the amended Rule 4(2)(e) of the Prisons Rules, 2024 which is sought to be relied by the learned Additional Public Prosecutor as was notified by the State Government on 02.12.2024. The said Rules are prospective in nature and as such shall be applicable from 02.12.2024 onwards. The application of the petitioner for grant of furlough was received by the respondent Jail

Superintendent on 19.08.2024. As a sequel of above, the position of law on the date of the petitioner's application is required to be taken into account and not the date on which the amended Rules were notified which have a prospective effect from 02.12.2024. In such an eventuality, the embargo created in regard to grant of furlough to such accused persons who are convicted under the provisions of MCOCA by virtue of the Rules notified on 02.12.2024, would not be attracted to the case at hand. As such the contention of the learned Additional Public Prosecutor to that effect is liable to be rejected."

He therefore prays for setting aside the impugned orders and grant of furlough leave to the petitioner.

4. Learned APP relies on the affidavit-in-reply by Mr. Sachin Ramesh Salve, Superintendent of Chattrapati Sambhajinagar Central Prison, wherein it has been stated that considering the police report and amendment in the rules dated 02.12.2024, the application of the petitioner has been rejected. The learned APP submits that now in view of rule 4 of the amended rules, categories of eligibility of prisoners for furlough has been given and rules 4(2)(g)(j) and (l) prescribe that the prisoners who are convicted for the offence of rape or rape with murder or attempt to rape with murder, prisoners sentenced to death or sentenced to imprisonment till death, prisoners, whose release is not recommended by an officer not below the rank of the Assistant Commissioner of Police or Deputy Superintendent of Police, on the

grounds that their release is prejudicial to public peace, order and tranquility, they are held to be not eligible for furlough. Further, though the rules came into effect from 02.12.2024, yet on 05.02.2025 another clarification was issued by the Home Department stating that new rules would be applicable to the applications which are for parole and furlough leave and, therefore, rejection by both the authorities is proper.

5. Here, it is to be noted that as regards the point in respect of applicability of new rules to the pending applications is concerned, it is dealt with in ***Arun Gulab Gawli (Supra)***. We agree to the legal proposition that the rules which are framed are always prospective in nature and unless they are made retrospectively applicable, they cannot be made so applicable retrospectively. Further, those rules came into effect by way of notification which was issued in exercise of powers conferred by clauses (5) and (28) of Section 59 of the Prisons Act, 1894 by the State Government. The State Government while amending the rules had not even contemplated for making the provision for applicability of the same to the pending applications. In other words, while promulgating the notification, there was no specific provision for its applicability with retrospective effect. Of course, it was mentioned that those provisions or the amendments are in supersession of the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959. Now, what has been annexed along with the affidavit-in-reply is the circular

issued by Joint Secretary, Home Department, which appears to be in the nature of clarification. Such clarification cannot take form or shape of notification which was issued under the powers conferred under the Act and, therefore, we agree with the opinion and the decision by the Coordinate Bench. The applicability of notification i.e. amendment dated 02.12.2024 is prospective in nature and it is not applicable to the pending applications as on that date.

6. The application by the present petitioner was presented in the month of September 2024. As per the rules, furlough means a short leave granted to a convicted prisoner after undergoing a specific period of sentence as an incentive for maintaining good conduct in the prison. The definition of furlough is same in the Rules of 1959 as well as Rules of 2024. If the leave application for short period is kept pending for months together, then very purpose of the same is going to frustrate. Now, in the present case, though the application was given in September, 2024, that application was decided by the respondent No.3 on 06.03.2025. There is inordinate delay in decision. If the application of the petitioner would have been decided immediately within a short period, it would have been prior to coming into force of the Notification dated 02.12.2024. Now, in new rules, the timelines for processing application for furlough or regular parole has been prescribed under Rule 23.

7. The another ground on which the application has been rejected is the negative report by police. Along with the affidavit-in-reply, the report and the documents have been annexed which state that the sister-in-law of the present petitioner is ready to stand as surety. However, the statements of the informant or the widow of the person murdered and the relatives have been taken. They are all residing at Kathoda Tanda, Taluka Gevrai, whereas the applicant and surety are resident of Rampuri, Taluka Gevrai. Another fact is that on earlier three occasions he was granted furlough leave. Of course, it appears that only three instances have been given by the petitioner and not the earlier and it is then stated that when he was released on 29.07.2011, he had come late i.e. surrendered himself late by 728 days, however, thereafter on 17.09.2024, his furlough was allowed and then the rest three instances where he was granted furlough leave. Therefore, that discretion has not been properly used. Negative report without basis and on surmises of the then aggrieved persons ought not to have been considered and therefore, the present writ petition deserves to be allowed to the extent of prayer clause 'B'. It appears that the petitioner is challenging the validity of rule 4(2)(j) of the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 2024, however, at this stage, he cannot be said to be the aggrieved person and, therefore, we keep the said challenge open to be considered in some other case. Hence, the following order :-

**ORDER**

- I) Criminal Writ Petition stands partly allowed.
- II) The impugned orders dated 06.03.2025 and 09.05.2025 passed by respondent Nos.2 and 3 respectively are hereby quashed and set aside.
- III) The respondents are directed to release the petitioner by imposing appropriate conditions and pass the order within a period of 15 days from today.

**[ SANJAY A. DESHMUKH ]**  
**JUDGE**

**[ SMT. VIBHA KANKANWADI ]**  
**JUDGE**

scm