



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.332 OF 2025

1. Narsingh s/o Shankar Talnikar
Age: 43 years, Occu.: Convict.
2. Suresh s/o Laxman Patel,
Age: 49 years, Occu.: Convict.
3. Shaikh Rauf s/o Shaikh Ayub,
Age: 35 years, Occu.: Convict.
4. Prashant s/o Sahebrao Shirphule
Age: 34 years, Occu.: Convict.
5. Mahendrakumar s/o Duberi Kewat,
Occu.: 51 years, Occu.: Convict.
6. Shakunt s/o Anant Giri,
Age: 43 years, Occu. : Convict.
7. Balu s/o Jagannath Shete,
Age: 42 years, Occu.: Convict.
8. Javed s/o Razzaq Shaikh,
Age: 41 years, Occu.: Convict.
9. Sandeep s/o Ishwar Kendele,
Age: 39 years, Occu.: Convict.
10. Anand s/o Augustine Bhambal,
Age: 42 years, Occu.: Convict.
11. Shaikh Akbar s/o Shaikh Kadar,
Age: 37 years, Occu.: Convict.
12. Ashish s/o Machindra Pagare,
Age: 34 years, Occu.: Convict.
13. Ritesh s/o Sashikant Pawar,
Age: 39 years, Occu.: Convict.
14. Rakesh s/o Nandkumar Patil,
Age: 37 years, Occu.: Convict.

15. Ganesh s/o Nivrutti Bansode,
Age: 36 years, Occu.: Convict.
16. Rajendra s/o Gundappa Shivpuji,
Age: 37 years, Occu.: Convict.
17. Siddu Vaijanath Vayvale,
Age: 35 years, Occu.: Convict.
18. Om Narayan s/o Amarnath Sharma
Age: 40 years, Occu.: Convict.
19. Ganesh s/o Gulab Garad,
Age: 36 years, Occu.: Convict.
20. Rakesh s/o Shambuprasad Gupta
Age: 43 years, Occu.: Convict.
21. Shailesh s/o Gulab Dhage
Age: 33 years, Occu.: Convict,
22. Tatyasaheb s/o Limbraj Patil,
Age: 36 years, Occu.: Convict.
23. Naresh s/o Ramchandra Varhe,
Age: 34 years, Occu.: Convict.
24. Anil s/o Nana Yelmame,
Age: 31 years, Occu.: Convict.

All R/o. At present confined in Open Prison,
Paithan, Tq. Paithan, Dist. Chh. Sambhajinagar.

.. Petitioners

Versus

1. The State of Maharashtra
Secretary Home Department, Mantralaya,
Mumbai.
2. Inspector General of Prisons,
Yerwada, Pune.
3. Superintendent,
Open Prison Paithan,
Dist. Chhatrapati Sambhajinagar.
4. Advocate General of Maharashtra,
1st Floor Bombay High Court, Fort,
Mumbai.

.. Respondents

...
Mr. Rupesh A. Jaiswal, Advocate for the petitioners.
Mr. A. R. Kale, APP for the respondents/State.
...

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

**RESERVED ON : 06 MAY 2025
PRONOUNCED ON : 11 JUNE 2025**

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

. All the petitioners herein are confined in Open Jail, Paithan and they are undergoing their sentences for the offence punishable under Section 302 of Indian Penal Code. They are challenging Rule 16(1) of Maharashtra Prisons (Furlough and Parole) Rules, 2024 to the extent of sanctioning authority for Emergency Parole and Rule 24(1) in respect of making provision for compulsory surety while releasing a prisoner on furlough and parole.

2. Heard learned Advocate Mr. Rupesh A. Jaiswal for the petitioners and learned APP Mr. A. R. Kale for the respondents/State.

3. Learned Advocate appearing for the petitioners vehemently submitted that as per Rule 16(1) Maharashtra Prisons (Furlough and Parole) Rules, 2024, now the authorities, who can grant regular parole or emergency parole, have been changed. Earlier the provision was different and it was easy. Earlier those powers were with the

Superintendent of Prisons. Now it will take more time for the sanction of parole and furlough, which is not in the interest of the prisoners.

4. Learned Advocate for the petitioners also submits that Rule 24(1) of the Maharashtra Prisons (Furlough and Parole) Rules, 2024 specifically provide “No prisoner shall be granted furlough or parole unless he can provide a suitable surety willing to receive him.” thereby making the said condition as a mandatory provision. Earlier there was Rule 6 and especially, the proviso to the same that was interpreted by the Full Bench of this Court in ***Dipak s/o Sudhakar Wakalekar Vs. State of Maharashtra and Ors., [2011 ALL MR (Cri.) 1933]***, as a discretionary provision. It was specifically held that as per proviso to Rule 6 of Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959, a convict confined in open prison can be released on furlough by dispensing with requirement of execution of bond by relatives. Similarly, it was held that a convict confined in open prison can be released on parole by the authorities by dispensing with requirement of execution of bond by the relatives. Therefore, the amendment that has been made is in contravention to the aims and objects of the Maharashtra Prisons (Furlough and Parole) Rules, 2024 and also violates Article 14 and 21 of the Constitution of Indian as well as contrary to the Full Bench decision and, therefore, these rules are required to be struck down.

5. Learned APP relies on the affidavit-in-reply of Dr. Jalinder Supekar, the Special Inspector General of Police (Prisons), Central Region, Chhatrapati Sambhajnagar, wherein it is stated that while drafting the Maharashtra Prisons (Furlough and Parole) Rules, 2024, the Government of Maharashtra has taken into consideration various directions and judgments passed by the High Court as well as the Hon'ble Supreme Court of India in respect of release of prisoners on furlough and parole. The new rules have become more liberal for the benefit of prisoners desiring to avail the facility. The change in the authorities is for maintaining discipline. The provisions make it mandatory for the authorities to decide the applications within a particular period. The rules are reasonable and not arbitrary, nor they violate any fundamental right. In respect of Rule 24(1) of the Maharashtra Prisons (Furlough and Parole) Rules, 2024, the condition of furnishing suitable surety had become necessary in order to have control over the incidences of absconding. The rule is not absolute and allows for reasonable discretion in assessing the suitability of the surety and the prisoner's conduct and history. The rules are framed to bring clarity in legal procedure. It ensures uniformity in implementation. It prevents abuse of discretion. The term "shall" in Rule 24(1) is based on certain conditions those were put forth and extensively discussed by the committee for drafting those rules. The affiant has given the data that on

the date of his affidavit, in all, 786 prisoners were absconding. Out of them, 237 prisoners were absconded while on parole and 327 prisoners were absconded while on furlough leave. Even during Corona Pandemic situation when special parole was granted and after those prisoners were asked to report back, yet the absconding prisoner's are almost 222 in number. There are also cases where the prisoners who went on parole and furlough did not return within time and, therefore, the Government was required to take this step. Learned APP as well as the affiant have relied on the decision in ***State of Haryana and Ors. Vs. Mohinder Singh, [2000 (3) SCC 394]***, wherein it was held that grant of parole involves discretion and public interest and it is not an absolute right of the prisoner. In ***Sunil Fulchand Shah Vs. Union of India and Ors., (2000) 3 SCC 409***, it was held that the parole can be subject to reasonable conditions including surety. In ***The Home Secretary (Prison) and Ors. vs. H. Nilofer Nisha, (2020) 14 SCC 161***, it was observed by Hon'ble Supreme Court that the prison authorities have the expertise to apply rule based discretion while granting parole. Further, in ***State of Gujarat and Ors. vs. Lal Singh and Ors., (2016) 8 SCC 370***, it was held that requirement of a surety is a valid condition that promotes accountability and reduces the risk of absconding. Even this Court in ***Criminal Writ Petition No.167 of 2025*** refused to exercise the powers when the surety amount was Rs.2,000/-. Further, in ***Criminal Writ***

Petition No.251 of 2025, this Court gave directions to Superintendent of Jail, Nagpur Central Jail, Nagpur, to accept the surety bond and transmit it in PDF format to Superintendent of Jail, Paithan District Open Prison, District Chhatrapati Sambhajinagar and directed to act upon the electronically transmitted surety bond. Therefore, there is no hurdle in the procedure to be adopted.

6. Taking into consideration the challenge to the rules, we would like to address the Maharashtra Prisons (Bombay Parole and Furlough) Rules, 1959 as “Rules of 1959” and Maharashtra Prisons (Parole and Furlough) Rules, 2024 as “Rules of 2024” henceforth. We are also taking note of the Full Bench decision in **Dipak s/o Sudhakar Wakalekar (Supra)**, wherein the earlier rules were interpreted in respect of surety bond or the condition regarding the submission of surety. Of course, the case was confined to the convicts confined in open prison. Here also, since all the petitioners are stated to be the prisoners, who are undergoing their sentences in open jail, certainly we are confining the issue in respect of them only and not in respect of prisoners, who are lodged in closed prison and can be said to be eligible for parole or furlough. The Full Bench of this Court had followed the decision of the Full Bench of Hon’ble Gujarat High Court in **Natia Jiria Vs. State of Gujarat, [1984 Cri.L.J. 936]**, wherein the proviso to Rule 6 and 10 were considered together with Rule 24 and 28, especially Rule 10 of Rules of

1959, used words "...and also subject to surety executing a bond in Form A appended to these rules, if so required..." This Court had then taken note of the fact that certain deterrent effects in respect of overstay by the inmates is not working properly, still taking into consideration the interpretation of law is concerned, it was held that as per proviso of Rule 6 of Rules of 1959, a convict confined in open prison can be released on parole/furlough by the sanctioning authority by dispensing with the requirement of execution of bond by the relatives. Now, it is to be noted that the Rules have been amended in 2024. When a prisoner is lodged in the open prison, certainly it would be as per rules and procedure that has been laid down there. The State Government has some assurance regarding inmates in the open prison. The data that has been given in the affidavit-in-reply of Dr. Jalinder Supekar, who had filed affidavit-in-reply on behalf of respondent No.1, does not appear to be confined to the inmates in the open prison. However, if we peruse the Rules of 2024, there appears to be no separate provision for the prisoners from the open prison. All appears to have been considered as one category. Certainly, in view of ***State of Haryana Vs. Mohinder Sing (Supra)***, it cannot be stated that the prisoners (may be from open prison or closed prison) has no absolute right for grant of parole or furlough. When the criteria is laid down, unless he or she can be said to be entitled as per the said criteria, that person will not be entitled to get such leave. The

State being the authority to grant such leave or make provision for such leaves may make such facility available by imposing conditions, of course they should be reasonable as laid down in ***Sunil Fulchand Shah (Supra)***. Now, change in the authority is definitely with the discretion of the State and the prisoners cannot ask that their applications should be decided by a particular authority. Rule 22(7) prescribes the procedure to avail emergency parole which provides that the prisoners shall be released on emergency parole without any delay, if he fulfills the criteria and terms and conditions. Rule 23 aims at timelines for processing application for furlough or regular parole, which reads thus :-

“23. Timelines for processing application for furlough or regular parole :-

Sr. No. (1)	Activity (2)	Maximum time admissible to complete the activity (within) (3)
1	Application for furlough or regular parole by the prisoner	Forty-five working days prior to the date from which furlough/regular parole is requested.
2	Application to be forwarded to the Sanctioning Authority/concerned Police Authorities	Six working days from the date of receipt of application.
3	Concerned Police Authorities must submit report to Sanctioning Authority.	Fifteen days from the date of receipt of application in their office.
4	When report is sent by post, additional time given for	Seven working days

	submission	
5	After receipt of police report, the Sanctioning Authority shall take a final decision.	Seven working days.
6	Decision of Sanctioning Authority regarding furlough/parole must be conveyed to the prisoner	Ten working days.
7	Release of prisoner	Immediately after necessary compliance of the conditions for release by the prisoner (as prescribed in the Sanction order).

Thus, it can be seen that though the authority has changed, yet now the said authority is required to take a decision within the aforesaid period, which was not the position in earlier Rules of 1959. Therefore, the challenge to the said rule is unreasonable.

7. Now, turning back to the rule regarding submission of surety, as aforesaid, there is always a discretion with the State to make provisions for parole and furlough leave and it cannot be asked as of right. Now, we would like to reproduce Rule 24(1) of Rules of 2024 in its entirety, however, the challenge is only to the extent of later part, which is highlighted by making it bold and italic. Rule 24(1) of Rules of 2024 reads thus :-

“24. Submission of surety, personal bond and cash surety.- (1) The Sanctioning Authority may grant furlough or parole to the prisoner subject to his executing a Personal

Bond in Form E and Cash Security in Form F to observe all or any of the conditions mentioned therein and also subject to such other conditions, if any, as may be specified by the Sanctioning Authority. ***No prisoner shall be granted furlough or parole unless he can provide a suitable surety willing to receive him. The surety chosen must be willing to enter into a Surety Bond as in Form C appended to these rules for such amount as may be fixed by the Sanctioning Authority.***

8. It appears that the petitioners are apprehending that some exorbitant amount would be imposed for suretyship and they will not be able to fulfill the said criteria. As aforesaid, there is no separate provision made for prisoners/convicts in the open prison and this point has not been taken by the petitioners by saying that they should be treated as a separate category. When the earlier provision was interpreted in ***Dipak Wakalekar (Supra)***, it was on the basis of the rule then prevailing, especially the words “if so required”. That means, the discretion was still left on the sanctioning authority. Now, in the present Rules of 2024, we would consider Rule 21(8), which is in the procedure to avail furlough or regular parole and Rule 22(5) in respect of procedure to avail emergency parole. Rule 21(8) and Rule 22(5) of the Rules of 2024 reads thus :-

“21. Procedure to avail furlough or regular parole. - (8)

On receipt of an application for furlough or regular parole, the Sanctioning Authority may make such enquiry as it considers necessary. The Sanctioning Authority, after

considering the remarks of the Superintendent of Prisons and enquiry report and remarks of the concerned police authority, is of opinion that there is no objection to release the prisoner concerned on furlough or regular parole, he shall make an order, within specified time limit, for his release on furlough or regular parole in Form D.

22. Procedure to avail Emergency Parole.- (5) The Sanctioning Authority shall after considering the crime history of the prisoner, grant emergency parole either with police escort, or on Surety Bond, Personal Bond and Cash Security Bond. The cost of police escort shall be borne by the prisoner or his relatives.”

9. The word ‘shall’ has not been used in context of passing order in respect of surety. It is only stated that the sanctioning authority shall make an order within the specified limit after considering the inquiry report and the other material. Rule 24 of the Rules of 2024 then states about submission of surety, personal bond and cash security. The earlier part says that the sanctioning authority may grant furlough or parole to the prisoner subject to executing personal and cash security or any of the conditions mentioned therein and subject to such other conditions, if any, as may be specified by the sanctioning authority and then it is stated that no prisoners shall be granted leave, unless he can provide a suitable surety willing to receive him. Now, when word “if any” is used in respect of any other condition and in the first part, suretyship

is not included as one of the mandatory condition, we observe that the second part (which is in bold and italic above) certainly gives a discretion to the sanctioning authority or in other words, the prisoner can be released on furlough or parole as the case may be by the sanctioning authority by dispensing with the requirement of execution of bond by the relatives. It cannot be stated that the said condition is mandatory in all the cases. Further, we agree to the submissions on behalf of the respondents that by present rules, simplification and making it liberal has been achieved when as per Rule 24, the surety has been given discretion to furnish the bond either to the Tahsildar of the area where the surety resides in or to the Superintendent of any Prison in Maharashtra nearest to the residence of the surety, of course that can be given to the Superintendent of Prison where the prisoner is confined. That means, the surety is not even required to go to the place mandatorily for submitting the surety bond to the prison where the prisoner is confined. Sub Rule (3) of Rule 24 then makes the Tahsildar or the Superintendent of Prisons, where such bond has been tendered, to forward the documents related to the surety to the Superintendent of Prison where the prisoner is confined. When such rules have been simplified, they cannot be said to be violative of any fundamental right, but the only fact now is that the interpretation of sub Rule (1) of Rule 24 cannot be taken as a mandatory condition while passing an order for

parole or furlough. The surety bond can still be dispensed with.

10. Respondents have made reference to the ***Writ Petition No.167 of 2025 decided by this Court on 27.02.2025***, wherein this Court had dismissed the said writ petition, however, granted opportunity to the petitioner to once again submit the suretyship to the jail authority. In that case, the surety amount was to the extent of Rs.2,000/- only. Solvency to the extent of that amount can be based on the basis of any document. In that case, there was no challenge to the provision and the petitioner was also from the open jail. In that matter also, the learned Advocate for the petitioner had relied on ***Dipak Wakalekar (Supra)*** and taking note of ***Dipak Wakalekar (Supra)*** itself, we had taken the note that the surety that was demanded was to the extent of Rs.2,000/- only and it is not in respect of exorbitant amount. Definitely, these things can be considered by the sanctioning authorities and reasonable amount of suretyship can be insisted.

11. With the above discussion, we observe that Rule 16(1) and Rule 24(1) of the Rules of 2024 cannot be quashed and set aside, as they are not violative of Article 14 and 21 of the Constitution of India and they are not contrary to the aims and objects of the Rules as well as contrary to the Full Bench decision in ***Dipak Wakalekar (Supra)***. Therefore, we direct the respondents to take note of the observations while passing the

orders in respect of inmates in respect of parole or furlough leave and issuing such directions to the sanctioning authority as well as Appellate Authority.

12. With these directions, the writ petition stands dismissed.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm