



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 649 OF 2025

[Shyamal Shankar Dutta **vs.** Superintendent, Morshi Open Prison,
Morshi, Distt. Amravati]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. O. K. Masurke, Advocate instructed by Ms. Ratna Singh, Advocate
for the petitioner
Mrs. N. R. Tripathi, APP for the State/respondent

CORAM: ANIL L. PANSARE AND
SIDDHESHWAR S. THOMBRE, JJ.

DATED : 03-09-2025.

On 6-8-2025, following order was passed.

“The petitioner is before the Court seeking modification of order dated 17/07/2025 passed by respondent No.1 to the extent of requirement of surety and also to deposit cash surety.

02. The learned Counsel for the petitioner submits that the petitioner has been shifted to open prison because of his good conduct. He was earlier released on P.R. Bond. There are no allegations that he has breached the order and has not returned back in time.

03. The learned A.P.P. submits that respondent No.1 is not empowered to extend the benefits in view of Government Resolution dated 02/12/2024. She has invited our attention to Rule 24 of the Maharashtra Prisons (Furlough Parole) Rules, 2024, which reads as under :

“24. Submission of surety, personal bond and cash security- (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.”

04. As could be seen, the rule provides that no prisoner shall be granted furlough or parole unless he can provide a suitable surety willing to receive him.

05. Such provision, in our view, would affect the release of persons like the petitioners, who are otherwise entitled for the furlough or parole leave.

06. At this stage, the learned A.P.P. submits that the communication seeking clarification as to whether the prisoner can be released on P.R. Bond is pending with the State Government.

07. That being so, we direct the State Government to consider the representation from the point of view of giving suitable concession to the deserving prisoners like in the present case, the petitioner has been shifted to open prison because of his good conduct and has been granted furlough/parole on P.R. Bond and further that there is no grievance that he has taken benefit of concession.

08. The Home Department, Government of Maharashtra shall take decision as expeditiously as possible and preferably by the end of this month i.e. 30th August, 2025.

09. In the meantime, issue notice to the respondents, returnable on 20th of August, 2025.

10. The learned A.P.P. waives service of notice for the respondent.”

2. Learned Additional Public Prosecutor (APP) seeks further time on the count that the Home Department, Government of Maharashtra has not yet taken decision.

3. Learned APP has, however, invited our attention to the judgment passed by the Division Bench of this Court at Aurangabad Bench in Criminal Writ Petition No. 332/2025. The petitioners therein challenged Rule 16(1) of the Maharashtra Prisons (Furlough and Parole) Rules, 2024 to the extent of sanctioning authority for emergency parole and Rule 24(1) in respect of making provisions for compulsory surety

while releasing a prisoner on furlough and parole. The Division Bench held that these rules are not violative of the Constitution of India and accordingly, directed respondents to take note of the observations made while passing the orders in respect of parole and furlough leave. The Division Bench, while dealing with Rule 24, observed in paragraph no. 9 as under :-

“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.”

Thus the Court held that what has been provided under Rule 24 cannot be taken as a mandatory condition while passing an order for parole or furlough leave and that the surety bond can be dispensed with.

4. Thus, the Division Bench of this Court at Aurangabad Bench has decided the issue. We, therefore, find that there is now nothing left to be decided by the State Government on this point. The respondent will have to act in terms of the law laid down by the Division Bench in the aforesaid case.

5. At this stage, learned APP submits that the request of petitioner seeking modification in order dated 17-7-2025 to the extent of relaxation of requirement of surety will be considered within four weeks from today. In our view, since the law is now settled, the decision should be taken within no time. We however, grant two weeks time to take decision with the expectation that the same will be taken as expeditiously as possible.

6. Learned counsel for the petitioner is satisfied with the aforesaid arrangement. Accordingly, with the above observations, the petition is disposed of.

(S. S. THOMBRE, J.)

(A. L. PANSARE, J.)