



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1272 OF 2024

Bhausahab Ankush Gade,
Age 45 yrs., Occ. Prisoner,
R/o C-9687, Harsool Central Jail,
Chhatrapati Sambhajnagar.

... Petitioner

... Versus ...

- 1 The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai – 32.
- 2 The Deputy Inspector of Police (Prison),
Central Prison, Harsool,
Aurangabad, Dist. Aurangabad.
- 3 The Superintendent of Prison,
Central Prison Harsool,
Tq. & Dist. Aurangabad.
- 4 The Additional Director General of Police,
Pune, Old Central Building - 2nd Floor,
Pune, 411 001.

... Respondents

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Mr. M.M. Parghane, Advocate for petitioner

Mr. A.V. Lavte, APP for respondent Nos.1 to 4

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CRIMINAL WRIT PETITION NO.1275 OF 2024

Pintu Ankush Gade,
Age 45 yrs., Occ. Prisoner,
R/o C-8935, Harsool Central Jail,
Chhatrapati Sambhajinagar.

... **Petitioner**

... **Versus** ...

- 1 The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya,
Mumbai – 32.
- 2 The Deputy Inspector of Police (Prison),
Central Prison, Harsool,
Aurangabad, Dist. Aurangabad.
- 3 The Superintendent of Prison,
Central Prison Harsool,
Tq. & Dist. Aurangabad.
- 4 The Additional Director General of Police,
Pune, Old Central Building - 2nd Floor,
Pune, 411 001.

... **Respondents**

...

Mr. M.M. Parghane, Advocate for petitioner

Mrs. Priya R. Bharaswadkar, APP for respondent Nos.1 to 4

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**CORAM : SMT. VIBHA KANKANWADI &
S.G. CHAPALGAONKAR, JJ.**

RESERVED ON : 26th SEPTEMBER, 2024

PRONOUNCED ON : 10th OCTOBER, 2024

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

1 The petitioners who are inmates invoke the constitutional powers of this Court to challenge the order dated 15.04.2024 passed by respondent No.2. They also pray for directions to be given to respondent authority to release them on furlough leave.

2 Both the petitioners are real brothers, who are serving imprisonment for life in Harsool Open Jail, Aurangabad, as they were convicted for the offence punishable under Section 302 of the Indian Penal Code.

3 The petitioners contend that they had preferred the applications seeking furlough leave for visiting their relatives. Respondent No.2 has rejected their applications only on the ground that they have overstayed for 194 days and 1122 days respectively when they were released earlier in 2014 and 2015 respectively. Now, they had made application for leave after more than 10 years. In the meantime, they were not released on any leave and,

therefore, they submit that respondent No.2 has not considered their application within four corners of law.

4 Heard learned Advocate Mr. M.M. Parghane for petitioner in both matters, learned APP Mr. A.V. Lavte for respondent Nos.1 to 4 in Writ Petition No.1272 of 2024 and learned APP Mrs. Priya R. Bharaswadkar for respondent Nos.1 to 4 in Writ Petition No.1275 of 2024.

5 It has been vehemently submitted on behalf of petitioners that respondent No.2 has not interpreted the provisions properly. Rule 4(10) of the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018 have not been considered properly in the light of Full Bench Decision of Gujarat High Court in **Bhikabhai Devshi vs. State of Gujarat** [1986 CJ (Guj) 39], which has also been then taken note of and relied by this Court at Principal Seat as well as Bench at Nagpur and this Court in Criminal Writ Petition No.960 of 2019 decided on 09.07.2019.

6 Learned APP is relying on the affidavit-in-reply by Dr. Jalindar Supekar, presently working as Special Inspector General of Police (Prisons), Central Region, Chhatrapati Sambhajinagar. He states that by Government Notification dated 16.04.2018 the Government has laid down the rules granting parole and furlough to the prisoners i.e. the amendment. Rule

4(10) of the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018 runs thus -

“Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough.”

He further states that in view of the various Judgments of the Hon'ble Supreme Court and the High Court the Additional Director General of Police and Inspector General of Prisons have formulated a policy that the applications of the inmates who have surrendered belatedly for leave would be forwarded to Government for final approval. If that policy is approved/sanctioned, then it would be applied while deciding the leave applications of the prisoners.

7 In the affidavit of respondent No.2 there is no answer as to why various decisions of this Court are not followed. The said affidavit is mainly in view of order passed by this Court on 19.08.2024. When submission was made that when another inmate by name Mansing Prabhu Rathod had also surrendered belatedly and an offence under Section 224 of the Indian Penal Code has been registered against him; yet, he was granted leave, thereby the authority is adopting pick and choose policy. In affidavit

Dr. Jalindar Supekar, the Special Inspector General of Police (Prisons), Central Region, Chhatrapati Sambhajnagar accepts that when said Mansing Rathod was released on Covid Parole, he had surrendered belatedly by 49 days i.e. on 15.07.2022 and then he accepts that he applied for leave on 23.12.2022 and his proposal was forwarded to Deputy Director General of Prison, Central Region, Chhatrapati Sambhajnagar on 11.01.2023, then his office had granted furlough leave on 11.04.2023. Now, it is tried to be stated that he had accepted the explanation given by Mansing Rathod for reporting the jail belatedly. However, when offence was already registered against him under Section 224 of the Indian Penal Code, we are of the opinion that the same criteria ought to have been adopted and certainly the present petitioners ought not to have been discriminated on the said ground.

8 The first and the foremost fact to be noted is that the rejection is stated to be in view of Rule 4(10) of the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018. Dr. Supekar himself accepts about the various decisions given by the Full Bench of Gujarat High Court as well as this Court. In fact, 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 they are amongst those cases when without adherence to the law laid down by the Full Bench of the Gujarat High Court and decision by this Court relying upon Gujarat High Court interpreting Section 4(10) of the said Rules the petitioner has been denied the benefit of furlough leave. When the authorities are aware about these decisions, still they are not implementing. Now, in the affidavit Dr. Jalindar Supekar had stated that some steps are taken, however, we are afraid that unless there would be changes in the legislation mere circulars or procedural difference will not give the proper results. Here, uniform policy is required, which can be achieved by amending rules in view of the fact that there are rules in existence which are part of the statute. At present, as the so called policy is not yet finalized, the respondents are bound by the pronouncements in the field which are referred above. In clear terms it is held that in cases of late surrender with no element of escape but only element of delay in surrendering they can be examined on the facts and circumstances as well as merits of the case. That rule is directory and not mandatory. The Full Bench of Gujarat High Court has specifically observed that the context of the latter part of Rule 4(10) of the said Rules would clear that the word 'shall' will have to be read as 'may' and directory.

leave for more than 10 years, therefore, their applications ought to have been considered. Hence, we pass following order.

ORDER

- i) Both Criminal Writ Petitions stand allowed.
- ii) Impugned order dated 15.04.2024 passed by respondent No.2 in respect of both petitioners stand quashed and set aside.
- iii) Petitioners be released on furlough leave for admissible days, which respondent No.2 to clarify upon executing two sureties in addition to their own bond to the extent of Rs.50,000/- (Rupees Fifty Thousand only).
- iv) Needless to clarify that petitioners once released on furlough, shall report to the Police Station, within whose jurisdiction they intend to stay, on every Monday and Thursday, between 10.00 a.m. to 11.00 a.m., during the period the leave has been granted.
- v) Petitioners should furnish entire details of their stay during the said period to the prison authorities as well as to the Police Station.

(S.G. CHAPALGAONKAR, J.)

(SMT. VIBHA KANKANWADI, J.)