



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION (ST) NO. 19317 OF 2024**

Stive @ Lisban John Miranda,  
Age : 42 Years, Occu.: Nil,  
R/at : 401, Monarch, 2<sup>nd</sup> Floor  
Hasanabad Lane, Behind St. Teresa  
Convent, Santacruz West, Mumbai. .. Petitioners

**Versus**

1. The State of Maharashtra,  
Through the office of the Public  
Prosecutor.
2. The Superintendent,  
Yerawada Open Prison, Yerawada,  
Pune.
3. The Deputy Inspector General  
(Prison), Western Region, Pune-6. .. Respondents

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Mr. N. N. Gawankar a/w Mr. Shreyas N. Gawankar i/b Mr.  
Manas N. Gawankar, for the Petitioner.

Ms. M. M. Deshmukh, A.P.P. for the State/Respondent.

Ms. Nisha Shreyakar, Jailor, Yerawada Open District Jail,  
Pune.

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**CORAM : BHARATI DANGRE &**  
**MANJUSHA DESHPANDE, JJ.**  
**DATED : 13<sup>th</sup> NOVEMBER, 2024.**

**ORAL JUDGMENT (PER BHARATI DANGRE, J.) :-**

1. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The Petition filed by a convict undergoing sentence of life imprisonment in Yerawada Open Prison, Pune, has made a very peculiar grievance before us as he has prayed that the furlough leave granted to him by order dated 01.08.2024, passed by the Respondent No.3 should be extended by a period of 17 days.

Pursuant to the order passed by the Deputy Inspector General (Prison), Western Region, Pune-6, on 01.08.2024, when he was released on furlough leave of 11 days only, the Petitioner has amended his prayer where he seek the following directions :

*“B-1) this Hon’ble Court be pleased to issue appropriate writ order or direction ordering and directing Respondent No.2 to release the petitioner on furlough leave for a period of 17 days on the same conditions as provided in the order dated 01.08.2024;”*

3. The aforesaid relief is claimed by the Petitioner on the basis of his entitlement of availing 28 days of furlough leave in a calendar year as per the the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018, which contemplate that the prisoner shall not be given furlough exceeding 21 days in a calendar year, for the first five years of his imprisonment and thereafter for the period not exceeding 28 days.

This provision is construed by the Petitioner to mean that on completion of five years of imprisonment he is entitled to be released on furlough up to the period of 28 days, in a calendar year. In utter disregard to the said rule, the benefit is refused to the Petitioner by the Respondent-Authorities by submitting when he was released on furlough by an order dated 01.08.2024, the release was restricted to 11 days as in the previous calendar year i.e. 2023 he was released on furlough leave on 20.12.2023 which spilled over to the next calendar year of 2024 and he surrendered in jail on 18.01.2024.

Based upon the aforesaid computation, the contention of the Respondent-Authorities is that he has already availed 17 days furlough leave in the year 2024 and therefore, by the order dated 01.08.2024 he is held entitled only for 11 days of furlough leave, and this is what has caused filing of the present Petition.

4. We have heard the learned counsel Mr. Gawankar for the Petitioner and the learned A.P.P. Ms. Deshmukh, for the Respondent-Authorities.

It is not in dispute that the grant of furlough and parole leave is governed by the Prisons (Bombay Furlough and Parole) Rules, 1959, which are formulated in exercise of the powers conferred by Clause 5 and 28 of Section 59 of the Prisons Act, 1894, in its application to the State of Maharashtra. The said Rules have set out the distinct parameters for releasing a convict on parole and furlough by determining the eligibility as well as setting out the authority

which is competent to grant such leave to the prisoner/convict.

The eligibility for availing furlough is determined by Rule 4 and all prisoners except the categories specified in the Rule are held eligible to avail the furlough leave.

The said Rule underwent change from time to time and by a notification issued on 16.04.2018, the Rule 4 came to be substituted by a new Rule alongwith Rule 5 and 6.

The substituted Rule 3 of the principal Rule trifurcated the eligibility of the convicted prisoners to be released on furlough in three clauses, clause 'A', 'B' and 'C'.

A prisoner, sentenced to imprisonment for a period exceeding 14 years is held entitled to become eligible for furlough on completion of three years of actual imprisonment. Clause 'C' contemplate other stipulation to the following effect :

*“(C) A Prisoner, sentence to imprisonment for a period exceeding fourteen years,*

*(1) Shall become eligible for furlough on completion of three years of actual imprisonment.*

*(2) Shall become eligible for second release on furlough after completion of one year of actual imprisonment from the date of last return from furlough.*

*(3) Shall become eligible for subsequent releases on furlough after completion of six months of actual imprisonment from the date of last return from furlough.*

*(4) Prisoner shall not be given furlough exceeding 21 days in a calendar year for the first five years of his imprisonment and*

*thereafter for the period not exceeding 28 days.”*

A note appended to the said Rule offered a further clarification.

*“NB: 1- The period of imprisonment in this rule includes the sentence or sentences awarded in lieu of fine in case of amount of fine is not paid.*

*2- For calculation of sentences for the purposes of eligibility for leave, ‘sentence’ shall mean a sentence as finally fixed on appeal, or revision, or otherwise, and includes an aggregate of one or more sentences. However, the actual imprisonment shall be inclusive of set – off period undergone in that specific case.*

*3- An order sanctioning the release of a prisoner on furlough shall cease to be valid if not given effect to within a period of two months from the date thereof. However sanctioning authority may extend such validity for further two months.*

*4- A register shall be maintained in the prison in the prescribed form in which all cases of prisoners eligible for leave shall be posted three months in advance of the date on which they become eligible for it. Appropriate entries in this regard shall also be made in the History Tickets of the inmates concerned.”*

5. A reading of the aforesaid Rule reveal that the prisoner shall be entitled to avail 28 days of furlough leave in a calendar year, if he has completed more than 5 years of his imprisonment.

The question for determination, in the backdrop of the said Rule, before us is whether in the peculiar facts, when

furlough leave of the Petitioner for the year 2023 has spilled over to the calendar year 2024, can it work to his detriment by curtailing the period of 17 days, which he availed in the year 2024.

6. As far as the Petitioner is concerned, Ms. Deshmukh has placed before us the chart reflecting his release on furlough alongwith the dates on which the Application was preferred, the date on which the Application was decided and the actual period of furlough enjoyed by him.

The same is tabulated separately for the calendar year 2022, 2023 and 2024 as below :

#### **Calendar Year 2022**

Sr. No.	Dates	Details
1.	29.08.2022	Furlough Application by the Petitioner to Jail
2.	03.12.2022	Furlough Application allowed by the DIG
3.	30.12.2022-27.01.2023	Release of Petitioner on furlough on his request date
4.	28.01.2023	Surrender of Petitioner to Jail

#### **Calendar Year 2023**

Sr. No.	Dates	Details
1.	12.06.2023	Furlough Application by the Petitioner to Jail
2.	27.10.2023	Furlough Application allowed by the DIG
3.	20.12.2023-17.01.2024	Release of Petitioner on furlough on his request date
4.	18.01.2024	Surrender of Petitioner to Jail

#### **Calendar Year 2024**

Sr. No.	Dates	Details
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1.	20.05.2024	Furlough Application by the Petitioner to Jail
2.	01.08.2024	Furlough Application allowed by the DIG
3.	03.09.2024- 14.09.2024	Release of Petitioner on furlough on his request date
4.	15.09.2024	Surrender of Petitioner to Jail

7. Perusal of the aforesaid data would reflect that in the year 2022, the Petitioner preferred an Application on 29.09.2022, which was allowed by the DIG on 03.12.2022 i.e. after lapse of three months and he came to be released on furlough on 30.12.2022 and after availing 28 days of furlough, he surrendered in jail on 28.01.2023.

Again in the year 2023, he preferred an Application on 12.06.2023 which was decided on 27.10.2023 but his release on furlough occurred only on 20.12.2023 and he surrendered in jail on 18.01.2024.

The crucial period of 17 days of the said leave happened to fall in the calendar year 2024 and this is the reason why the Respondent-Authorities are of the view that these 17 days have to be computed in the calendar year 2024 and he is entitled only for furlough leave of the balance period i.e. 11 days in the year 2024.

8. Ms. Deshmukh, the learned A.P.P. attempted to justify the said decision not to make the Petitioner entitled for the balance 17 days in the calendar year 2024 by submitting that he has already availed 17 days of furlough in the calendar year. We are afraid that the said interpretation of the Rule is not be correct.

‘Calendar Year’ as per the Websters Dictionary is defined to be a period of a year beginning and ending with dates that are conventionally accepted as marking the beginning and end of a numbered year. Therefore, calendar year is a period from 1<sup>st</sup> January to 31<sup>st</sup> December of a particular year or 365/366 days divided into 12 months or 52 weeks.

When the Rule has specifically prescribed the eligibility to avail the furlough leave with reference to a ‘Calendar Year’, it is expected that the prison authorities live upto the computation, which the rule making authority intended to be assigned to the said term.

If the calendar year is a period which commences from 1<sup>st</sup> of January of a year and come to an end on 31<sup>st</sup> December of that particular year, the eligibility of the prisoner to avail the furlough for 28 days must be spread over for that period.

9. In Criminal Writ Petition No. 660 of 2012, the Division Bench of this Court had an opportunity to deal with the terminology ‘Calendar Year’ with reference to the extension to be granted and the Division Bench has observed thus :

*“ 3) On plain reading of this Rule, it is obvious that the Sanctioning Authority is competent to grant extension of Furlough Leave up to 14 days only once in a “calendar year” and no further extension can be granted to the prisoner on the same conditions. The question is, whether the second extension given to the Petitioner in December, 2009, which incidentally spilled over*



*upto 4th January, 2010, in calendar year 2010, can be reckoned for the purposes of considering the request of the Petitioner for extension of Furlough Leave, granted in August, 2010. The expression “once in a calendar year” would and ought to mean in the same English calendar year in which it is made and granted. In our opinion, since the said extension granted in December, 2009 was in the previous calendar year, which incidentally spilled over to the calendar year 2010 upto 4<sup>th</sup> January, 2010, that cannot be reckoned for considering the request made in 2010. In other words, the request for grant of extension of Furlough period, made by the the Petitioner in August, 2010, ought to have been considered as the first request made in the calendar year 2010.”*

10. If for some reason, like in the case of the present Petitioner in the year 2022, though he made an application for furlough leave on 29.08.2022, it came to be sanctioned only on 03.12.2022, and he was released on furlough on 30.12.2022 but it has to be treated as a furlough leave for the calendar year 2023.

It is quite possible for the prison authorities to refuse the release of the Petitioner by taking recourse to the provision contained in the amended rule of 2018, which clearly stipulate that an order sanctioning a release on furlough shall cease to be valid, if not given effective within a period of two months from the date thereof, but with a discretion in the sanctioning authority to extent such validity for further period of two months.

11. Mr. Gawankar has pointed out to us that in the wake of the notification issued by the State Government, it is imperative for the authority deciding the application for furlough or parole leave, to be decided within a period of 45 days and this statement is not disputed by Ms. Deshmukh.

Therefore, what we expect from the prison authorities/competent authorities who are empowered to take a decision upon the Application for grant of furlough is to decide the application within the prescribed timeline.

It is a well settled position in law that if the Act/the statute or the Rules prescribe a manner in which an act has to be performed, then it is imperative for the authorities who are to discharge the said function, to follow the mandate, which shall include the timelines within which the decision has to be taken.

We therefore direct the prison authorities/competent authorities who are competent to take decisions on furlough applications within the timeline of 45 days.

12. In the case of the Petitioner, we have noted that in the year 2022 his application is decided almost after lapse of three months and thereafter he came to be released at the fag end of the calendar year i.e. on 30.12.2022 and his leave necessarily spread over in the calendar year 2023 and for which he is not responsible at all.

Similarly, in the year 2023 though he preferred an application in the month of June 2023, it was decided after four months i.e. on 27.10.2023. Here also the Petitioner cannot take the blame, as his application of the month of June is

decided only on 27.10.2023 and ultimately his release came on 20.12.2023 but one thing is to be noted that he is availing the furlough leave for the calendar year 2023.

13. If the term 'Calendar Year' is given its due meaning, the Respondent-Authorities shall not go wrong as the Rule contemplate availing of 28 days of furlough leave in a particular 'Calendar Year', which shall commence from 1<sup>st</sup> of January of each year and come to an end on 31<sup>st</sup> of December of that year. If there is a spill over of the furlough leave, it is just a coincidence but definitely it shall have to be construed as a leave for the year in which a prisoner was entitled to avail the same.

As in the present case though the furlough leave of the Petitioner for the calendar year 2023 spilled over in the year 2024, that itself is not sufficient to deny him his entitlement of 28 days in the calendar year of 2024. He must avail his full entitlement of 28 days in the calendar year 2024 and any manner to scuttle this entitlement would amount to an arbitrary decision on the part of the authorities and in the case of the Petitioner, we find the decision taken to restrict his furlough leave to 11 days in the calendar year 2024 on the ground that his leave for the year 2023 by 17 days has spilled over in the calendar year 2024 to be one such decision. We find the act of the Respondents completely unjustified and also against the spirit of the Rules formulated for grant of furlough leave to the prisoner/convict.

14. We must pertinently note the delay on the part of the authorities who take decision upon the furlough leave

applications as we have taken judicial note of the fact that such applications are not decided in time and if they are decided in time and strictly in accordance with the Rules, such contingencies and scenarios can be easily avoided.

We expect the authorities to act strictly as per the Rules and decide the Application by adhering to the timelines that are prescribed, in taking decision on the application vide circular issued by the Home Department on 01.08.2007, which continue to be in force and mandate the decision to be taken on the application for furlough within the period of 45 days.

15. As a result of the aforesaid discussion, according to us the Petitioner is entitled for availing the balance 17 days of furlough leave in the calendar year 2024 and we hope and trust that the decision of his release will be taken before the end of 31.12.2024 so that this complication shall not again arise for the next calendar year.

Let this order be communicated to the concern authorities, with an expectation that it shall be acted with utmost promptitude and the release of the Petitioner to avail his balance furlough leave in the calendar year 2024 shall be availed by him before 31.12.2024.

Let his order be communicated by the learned A.P.P. to the competent authority forthwith.

16. Rule made absolute in terms of the aforesaid terms.

**(MANJUSHA DESHPANDE, J.)**

**(BHARATI DANGRE, J.)**

Chaitanya