IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 883 OF 2025

Dilip Premnarayan Tiwari … Petitioner
Vs.
State of Maharashtra … Respondent

.....

Ms Neha Deshpande, Advocate (appointed) for the Petitioner.
Mr. A.A. Naik, APP for the Respondent - State.

.....

CORAM : MADHAV J. JAMDAR &
PRAVIN S. PATIL, JJ.
DATE : 08.05.2026.

Judgment (Per, Madhav J. Jamdar, J.) :

1. Heard Ms Neha Deshpande, learned Advocate appointed to represent the interest of the Petitioner and Mr. A.A. Naik, learned APP for the Respondent - State..

2. The challenge in this writ petition, filed through jail, is to the order dated 11.06.2024, by which the petitioner's leave was rejected on the ground that the petitioner is not entitled to parole leave in view of Rule 4(10) of the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959 ("*the 1959 Rules*").

3. During the course of hearing, Mr. A.A. Naik, learned APP, tendered a copy of the show cause notice dated 12.06.2023, the reply dated 19.06.2023 filed by the petitioner, and certain supporting documents. He

also placed on record the proposal dated 25.03.2024 submitted by the Superintendent, Kolhapur Central Prison (Kalamba) forfeiting entire remission permanently and order dated 26.12.2024 passed by the Deputy Inspector General of Prison, by which punishment of forfeiture of remission permanently has been imposed.

4. The said Rule 4(10) of "the 1959 Rules" read as under :

> "4. **Eligibility for furlough** : - **All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough**:
>
> …….
>
> (10) **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**."
>
> (Emphasis added)

5. Perusal of the record shows that, in the meantime, the Maharashtra Prisons (Furlough and Parole) Rules, 2024 ("***the 2024 Rules***") have been framed by the Government of Maharashtra by Notification dated 2.12.2024 in exercise of the powers conferred by clauses (5) and (28) of Section 59 of the Prisons Act, 1894, in supersession of the 1959 Rules.

6. Rule 7 of the said 2024 Rules provides as under:

"*7. Duration of furlough.- (1) The duration of furlough for eligible prisoners shall be as follows:-*

Sr. No.	***Duration of sentence awarded***	***Period of actual imprisonment undergone***	***Admissible duration of furlough per calendar year***
1.	*Not exceeding five years*	*On completion of one year of actual imprisonment*	*Twenty-one days*
2.	*Exceeding five years but not more than fourteen years*	*On completion of two years of actual imprisonment*	*Twenty-one days during the first five years of actual imprisonment and twenty-eight days for the remaining period*
3.	*Life imprisonment or imprisonment exceeding fourteen years*	*On completion of three years of actual imprisonment*	*Twenty-one days during the first five years of actual imprisonment and twenty-eight days for the remaining period*

Note 1.*- The period of imprisonment in this rule includes the sentence or sentences awarded in lieu of fine in case if the fine is not paid.*

Note 2.*- For the purposes of eligibility for furlough, 'sentence' means the sentence as finally decided in appeal, or revision, or otherwise, and includes the aggregate of one or more sentences.*

(2) ***The prisoner who has defaulted in any way in returning to the prison at the time of completion of his furlough or parole is eligible for furlough as per the following criteria:-***

Sr. No.	*Period of unauthorised overstay before surrendering*	*Where surrendered himself*	*Where admitted by police*
1.	*Upto 7 days*	*Eligible as per the rules*	*One year after admission from overstay.*
2.	*From 8 to 180 days*	*One year after surrender from overstay*	*Two years after admission from overstay*
3.	*From 181 to 365 days*	*Two years after surrender from*	*Three years after admission from*

		overstay	*overstay*
4.	***From 366 days and above***	***Three years after surrender from overstay***	***Five years after admission from overstay***

(Emphasis added)

7. It is the submission of Ms. Neha Deshpande, learned counsel appointed to represent the petitioner that, Rule 4(10) of the 1959 Rules provides for complete non-eligibility for furlough if there is default in surrendering on time after release on parole or furlough. She submitted that as some specific period has been provided by Rule 7(2) of 2024 Rules, in view of the law laid down by the Supreme Court in ***State of Haryana and Others Vs. Jagdish*** reported in ***(2010) 4 SCC 216***, liberal policy as contained in the 2024 Rules will apply to the petitioner. However, she submits that no hearing opportunity is provided under Rule 7 of said 2024 Rules and for sufficient explanation, no power is given to reduce the period as set out in said Rule 7 particularly Sub-Rule (2) thereof. She, therefore, submitted that said Rule 7 particularly Sub-Rule (2) is violative of Articles 14 and 21 of the Constitution of India and violative of the principles of natural justice. She relied upon the judgments of the Supreme Court of India in ***Sunil Batra Vs. Delhi Administration*** reported in ***1980 (3) SCC 488*** as also on Full Bench judgment of this Court in case of ***Kanitlal Nandlal Jaiswal Vs. Divisional Commissioner Nagpur Division, Nagpur,*** reported in ***2019 SCC OnLine Bom.13216*** .

8. Ms. Deshpande, learned counsel also submits that the petitioner is in jail since 29.05.2004 and he has completed actual imprisonment of 16 years and that petitioner's behaviour in jail throughout was excellent except when he was released on COVID-19 pandemic parole when he overstayed for 370 days. It is submitted that the petitioner had sufficient explanation as the petitioner's father passed away during the said period and, therefore, the petitioner was constrained to give financial assistance to his family. She further submitted that as far as the order dated 26.12.2024 passed by the Deputy Inspector General of Prisons imposing on the petitioner punishment of forfeiture of remission, is passed without considering the detailed explanation given by the petitioner and the documentary evidence produced by the petitioner.

9. On the other hand, Mr. Naik, learned APP submitted that in fact what will apply is Section 48-A of the Prisons Act 1894. However, he states that Rule 7 of 2024 Rules are applicable for the convict who has defaulted in returning to the prison on completion of furlough or parole leave and provides when such convict will become eligible for further furlough leave, after completion of certain period of imprisonment and, therefore, the period provided under Sub-Rule (2) of Rule 7 will apply. Learned APP submitted that in fact as per Rule 4(10) of 1959 Rules, there was complete prohibition in case of default in surrendering on time and now as per Rule 7(2), after specified period, application for furlough

leave can be considered. Learned APP therefore submitted that no interferrence in the Impugned Order is warranted.

10. Before considering the rival contentions, it is necessary to set out certain factual aspects:

i. The petitioner was convicted by the learned Ad-hoc District & Sessions Court, Palghar in sessions case concerning C.R. No.144/2004 registered with Manikpur Police Station on 08.09.2006 for the offences punishable under sections 302, 307, 452 r/w. 34 of the Indian Penal Code, 1860, and was awarded death sentence.

ii. The appeal bearing Cri. Appeal No.1086 of 2006 preferred by the Petitioner was dismissed by this Court.

iii. The Supreme Court of India modified the death sentence to 25 years of actual imprisonment & fine by order dated 10.12.2009.

iv. The petitioner in said offence was arrested on 29.05.2004 and has completed more than 16 years of actual imprisonment.

v. From the period of 29.05.2004 onwards till 2020, the petitioner was released on furlough and parole leave on many occasions and he has reported back to the jail authority within time.

vi. The petitioner was released on parole due to COVID-19 Pandemic on 06.08.2020 for a period upto 26.05.2022 and has failed to return back to the jail within time and was arrested on 01.06.2023

i.e. after delay of about 370 days.

vii. The petitioner's furlough application was rejected by the Impugned Order dated 11.06.2024 passed by the Deputy Inspector General of Prisons, Western Division, Yerawada, Pune on the ground of ineligibility as provided under Rule 4(10) of the 1959 Rules.

viii. Show Cause Notice dated 12.06.2023 issued by the Superintendent, Kolhapur Central Prison, Kolhapur was served on the petitioner seeking explanation about proposed punishment of permanent forfeiture of remission as per Section 48-A (Bombay Amendment) of Prisons Act, 1894.

ix. The petitioner submitted detailed explanation dated 19.06.2023. In the said explanation, it is stated by the petitioner that during COVID-19 Pandemic period, his father suffered from a brain haemorrhage and, therefore, his father was hospitalized and for his father's treatment, an amount of Rs.4,00,000/- (Rupees Four Lakh) has been collected from the relatives and Rs.50,000/- (Rupees Fifty Thousand) has been taken as a loan from Bajaj Alliance. It is further stated that as funds got over, the hospital refused to continue the treatment of the petitioner's father and, therefore, petitioner's father was discharged from the hospital and subsequently, petitioner's father passed away on 10.02.2021. It is further stated that as thereafter his relatives started demanding the

money given as a loan, he was required to work for the purpose of repaying the said amount.

x. By order dated 26.12.2024, the Deputy Inspector General of Prisons has imposed the punishment of permanent forfeiture of remission. However, perusal of the order shows that the detailed explanation given by the petitioner has not been considered. The relevant part of the said order reads as under :

> "सदर बंदी पहिल्यांदा ३७० (तीनशे सत्तर) दिवस अनाधिकृतपणे कारागृहाबाहेर राहिल्याने कारणे दाखवा नोटीस बजावली होती. **सदर नोटीशीस बंदीने स्पष्टीकरण दिले आहे. परंतू सदरचे स्पष्टीकरण संयुक्तीक वाटत नाही.** त्यामुळे महाराष्ट्र नियमावली प्रकरण क्रं २७ व शासन अधिसूचना २०११, गृहविभाग मंत्रालय, मुंबई ३२, दि २ ऑगस्ट २०११ शासन अधिसुचनेतील संचित/अभिवचन रजेवरुन उशिराने परत येणा- या कैद्यांसाठी माफीतील कपातीचे प्रमाणामधील अ. क्र. ८ प्रमाणे माफीत कायमस्वरुपी कपात करण्यात येईल अशी कारागृहीन शिक्षा प्रस्तावित केलेली आहे."
>
> (Emphasis added)

Thus, it is very clear that the detailed explanation submitted by the petitioner is not considered.

11. Thus, in this case, the issues to be decided are as follows :

i. Whether for determining the period as contemplated under Sub-Rule (2) of Rule 7 of the Rules 2024, any explanation is required to be called for from the prisoner and for sufficient reason, the said period can be condoned or reduced?

ii. Whether order dated 26.12.2024 of the Deputy Inspector General of Prisons passed by exercising power under Section 48-A (Bombay

Amendment) of the Prisons Act, 1894, is legal and valid?

12. As noted herein above, Ms. Deshpande, learned counsel has relied on judgment of ***Kanitlal Nandlal Jaiswal*** (*supra*). In the said case, the Larger Bench of this Court was considering whether proviso to Rule 19(2) introduced in terms of Notification dated 16.04.2018, to the 1959 Rules is violative of Articles 14 and 21 of the Constitution of India.

13. The said proviso to Rule 19(2) introduced in terms of Notification dated 16.04.2018 provided that a prisoner shall not be released on emergency or regular parole for a period of one year after the expiry of his last emergency or regular parole except in case of death of his nearest relatives.

14. While considering the challenge to said proviso, the Larger Bench has relied on the judgment of ***Sunil Batra Vs. Delhi Administration and others*** reported in ***(1978) 4 SCC 494*** and more particularly on paragraph 52 of the same which reads as under:

> "*52. True, our Constitution has no 'due process' clause or the VIII Amendment; but, in this branch of law, after Cooper and Maneka Gandhi, the consequence is the same.* ***For what is punitively outrageous scandalizingly unusual or cruel and rehabilitatively counter-productive, is unarguably unreasonable and arbitrary and is shot down by Articles 14 and 19 and if inflicted with procedural unfairness, falls foul of Article 21.*** *Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authority. Is a person under death sentence or undertrial unilaterally dubbed dangerous liable to suffer extra torment too deep for tears ?*

Emphatically no, lest social justice, dignity of the individual, equality before the law, procedure established by law and the seven lamps of freedom (Article 19) become chimerical constitutional claptrap. Judges, even within a prison setting, are the real, though restricted, ombudsmen empowered to proscribe and prescribe, humanize and civilize the life-style within the carcers. The operation of Articles 14, 19 and 21 may be pared down for a prisoner but not puffed out altogether. For example, public addresses by prisoners may be put down but talking to fellow prisoners cannot. : Vows of silence or taboos on writing poetry or drawing cartoons are violative of Article 19. So also, locomotion may be limited by the needs of imprisonment but binding hand and foot, with hoops of steel, every man or woman sentenced for a term is doing violence to Part III. So Batra pleads that until decapitation he is human and so should not be scotched in mind by draconian cellular insultation nor stripped of the basic fellowship which keeps the spirit flickering before being extinguished by the swinging rope."

(Emphasis added)

15. Paragraph No.14 of ***Kanitlal Nandlal Jaiswal*** (*supra*) is also relevant, which reads as under:

"14. *The said position of law was followed in the case of* ***Sunil Batra Vs. Delhi Administration reported (1980) 3 S.C.C. 488****, popularly known as* ***Sunil Batra-II*** *case, wherein it was reiterated that* ***treatment to a prisoner must satisfy the test of Articles 14, 19 and 21 of the Constitution of India. Although the said judgments pertained more to the manner of treatment to be meted out to convicts and prisoners inside the four walls of jails, the principles laid down therein are relevant even for the manner in which such convicts are to be treated in the context of grant of furlough and parole, since the avowed objectives of furlough and parole leaves are that they are progressive measures of correctional services meant for ensuring that such convicts and prisoners are treated with a human touch, so that they are able to maintain continuity of***

their family life and that they are saved from evil effects of continuous prison life."

(Emphasis added)

16. The reliance is also placed on the judgment of the Supreme Court in case of ***Asfaq Vs. State of Rajasthan and others*** reported in ***(2017) 15 SCC 55***, in which the Supreme Court has held as under:

"*18.* ***The provisions of parole and furlough, thus, provide for a humanistic approach towards those lodged in jails. Main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems and to enable them to maintain their links with society. Even citizens of this country have a vested interest in preparing offenders for successful re-entry into society. Those who leave prison without strong networks of support, without employment prospects, without a fundamental knowledge of the communities to which they will return, and without resources, stand a significantly higher chance of failure. When offenders revert to criminal activity upon release, they frequently do so because they lack hope of merging into society as accepted citizens. Furloughs or parole can help prepare offenders for success.***

19. ***Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not.*** *This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become a threat to the law and order of the society, should not be released on parole. This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a*

particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. ***To put it tersely, the authorities are supposed to address the question as to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.***

20. Thus, not all people in prison are appropriate for grant of furlough or parole. ***Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that they aspire to live as law-abiding citizens. Thus, parole program should be used as a tool to shape such adjustments.***

21. To sum up, in introducing penal reforms, the State that runs the administration on behalf of the society and for the benefit of the society at large cannot be unmindful of safeguarding the legitimate rights of the citizens in regard to their security in the matters of life and liberty. It is for this reason that in introducing such reforms, the authorities cannot be oblivious of the obligation to the society to render it immune from those who are prone to criminal tendencies and have proved their susceptibility to indulge in criminal activities by being found guilty (by a Court) of having perpetrated a criminal act. One of the discernible purposes of imposing the penalty of imprisonment is to render the society immune from the criminal for a specified period. It is, therefore, understandable that while meting out humane treatment to the convicts, care has to be taken to ensure that kindness to the convicts does not result in cruelty to the society. Naturally enough, the authorities would be anxious to ensure that the convict who is released on furlough does not seize the opportunity to commit another crime when he is at large for the time being under the furlough leave granted to him by way of a measure of penal reform.

22. Another vital aspect that needs to be discussed is as to ***whether there can be any presumption that a person who is***

for convicted of serious or heinous crime is to be, ipso facto, treated as a hardened criminal. Hardened criminal would be a person for whom it has become a habit or way of life and such a person would necessarily tend to commit crimes again and again obviously, if a person has committed a serious offence for which he is convicted, but at the same time it is also found that it is the only crime he has committed, he cannot be categorised as a hardened criminal. In his case consideration should be as to whether he is showing the signs to reform himself and become a good citizen or there are circumstances which would indicate that he has a tendency to commit the crime again or that he would be a threat to the society. Mere nature of the offence committed by him should not be a factor to deny the parole outrightly. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of offence for which he was sentenced. We may hasten to put a rider here, viz. in those cases where a person has been convicted for committing a serious offence, the competent authority, while examining such cases, can be well advised to have stricter standards in mind while judging their cases on the parameters of good conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquility etc.

23. There can be no cavil in saying that a society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and services and recourse made available to the prisoners. Being in a civilized society organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. If a person commits any crime, it does not mean that by committing a crime, he ceases to be a human being and that he can be deprived of those aspects of life which constitute human dignity. For a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. [See Sunil Batra (2) v. State (UT of Delhi), Maneka Gandhi v. Union of India and Charles Sobraj v. Superintendent Central Jail.]

> *24. It is also to be kept in mind that by the time an application for parole is moved by a prisoner, he would have spent some time in the jail. During this period, various reformatory methods must have been applied. We can take judicial note of this fact, having regard to such reformation facilities available in modern jails. One would know by this time as to whether there is a habit of relapsing into crime in spite of having administered correctional treatment. This habit known as "recidivism" reflects the fact that the correctional therapy has not brought (sic any change) in the mind of the criminal. It also shows that criminal is hard core who is beyond correctional therapy. If the correctional therapy has not made in itself, in a particular case, such a case can be rejected on the aforesaid ground i.e. on its merits.*"
>
> (Emphasis added)

17. Thus, what the Supreme Court has said that the provisions of parole and furlough provides for a humanistic approach. It has been observed that the grant of parole or furlough is ingrained in the reformative theory of sentencing; however, competing public interests must also be kept in mind while deciding as to in a particular case, parole or furlough is to be granted or not. It has been observed that public interest demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have a tendency to become a threat to the law and order of the society, should not be released on parole. Therefore, it has been observed that while meeting out human treatment to convicts, care has to be taken to ensure that kindness to convicts does not result in cruelty to the society and, therefore, the convict, who is released on furlough and/or parole should

not commit another crime when he is at large for the time being under the furlough leave granted to him by way of measure of penal Rule.

18. In the said case of ***Kanitlal Nandlal Jaiswal*** (*supra*), it has been held by the Larger Bench that parole is not a mere administrative decision dictated only by the administrative policy of the State but it is limited legal right available to the convict or prisoner subject to satisfaction of the requirement specified in the 1959 Rules for grant of parole, with the avowed objectives to be achieved as specified in Rule 1 (A) of said Rules. The Larger Bench, after considering various judgments, has held that there is no basis for creating an exception and no nexus with the objective for grant of parole rules specified in Rule 1(A) of the 1959 Rules. It has been held that proviso to Rule 19(2) of the 1959 Rules introduced in terms of Notification dated 16.04.2018 violates Articles 14 and 21 of the Constitution of India and, therefore, the proviso to Rule 19(2) of the 1959 Rules introduced in terms of Notification dated 16.04.2018 is struck down as violative of Articles 14 and 21 of the Constitution of India.

19. The objective for grant of furlough leave as per Rule 3 of the 2024 Rules is to enable the prisoner to remain in touch with his family and deal with family matter, to provide relief from the detrimental impact of continuous captivity in prison and to enable the prisoner to remain hopeful about future and to cultivate active interest in life. Thus, it is

very clear that very valuable right has been given to the convicted accused.

20. As noted by the Supreme Court in the case of ***Asfaq*** (*supra*), the provisions of parole and furlough rules provides for humanistic approach towards those lodged in jails and main purpose of such provisions is to afford to them an opportunity to solve their personal and family problems, to enable them to maintain their ties with society, and therefore, it is absolutely essential that for overstay when released on furlough or parole leave, without affording any opportunity of calling for explanation and consideration of the same in mechanical and arbitrary manner prescribing the period after which the furlough application can be considered is not only totally illegal but violative of Articles 14 and 21 of the Constitution of India.

21. A perusal of Rule 7 and particularly Sub-Rule (2) provides that if a prisoner overstays for period of 8 to 180 days, he is eligible for furlough leave only after one year from surrender upon overstay or two years after admission upon overstay. Similar provisions are made for various periods. The said Sub-Rule (2) clearly shows that the provision is made in a mechanical manner and the provision does not contemplate principles of natural justice.

22. Therefore, there is substance in the contention raised by Ms. Deshpande, learned counsel appointed to represent the interest of the

petitioner that said Sub-Rule (2) of Rule 7 is violative of Articles 14 and 21 of the Constitution of India. As the object for grant of furlough is to provide relief from the detrimental impact of continuous captivity in prison and to enable the prisoner to remain hopeful about future and to cultivate an active interest in life, as also, to afford to the prisoners an opportunity to solve their personal and family problems and enable them to maintain their ties to the society.

23. While setting out the criteria for eligibility of furlough leaves, as in the present case that, the petitioner's furlough leave will be considered only after the completion of period of five years of imprisonment and that too without affording any opportunity of offering explanation and without considering the cause for late surrender is clearly arbitrary, contrary to the principles of natural justice and violative of Articles 14 and 21 of the Constitution of India.

24. In a given case, if a prisoner is returning back within time to the jail after completion of furlough/parole leave and met with serious accident and admitted in the hospital for considerable period, will be treated in the same manner as like other prisoner who has defaulted in surrendering on time without any sufficient reason. Thus, it is clear that the Rule 7(2) of the 2024 Rules is violative of Articles 14 and 21 of the Constitution of India and also contrary to the principles of natural justice.

25. In the present case, the petitioner, in the inquiry conducted under

Section 48-A of the Prisons Act, 1894 ("***said Act***"), has submitted a detailed explanation. However, while passing the order under Section 48-A of the said Act, the Deputy Inspector General of Prisons, by order dated 26.12.2024, has not considered the said explanation submitted by the petitioner. The relevant part of the said order dated 26.12.2024 which shows non-consideration of the detailed explanation submitted by the petitioner is already set out hereinabove.

26. A Division Bench of this Court in the case of ***Shirvraj s/o Hanmantrao Patil Vs. State of Maharashtra and others*** reported in ***(1993) 3 Bom. CR 717*** has held with respect to Section 48-A as under:

> "*3. If a prisoner overstays a parole or furlough, the mischief is a prison offence by virtue of the provisions of section 48-A inserted by the Maharashtra Amendment in Prisons Act, 1894. Section 48-A is quoted below for the ready reference :--*
>
> > *"**If any prisoner fails without sufficient cause to observe any of the conditions on which his sentence was suspended or remitted or furlough or release on parole; was granted to him, he shall be deemed to have committed a prison offence and the Superintendent may, after obtaining his explanation, punish such offence by***
> >
> > *(1) a formal warning as provided in Clause (1) of section 46;*
> > *(2) reduction in grade if such prisoner has been appointed an officer of prison;*
> > *(3) **loss of privileges admissible under the remission or furlough or parole system; or***
> > *(4) loss of such other privileges as the State Government may by general or special order, direct."*

> ***It is clear that any punishment to be inflicted under section 48-A for overstay of the parole, will have to be awarded after obtaining the explanation of the prisoner alleged to have committed such offence. We do not find that any such opportunity was ever given to the petitioner to furnish his say*** *and Shri Bhapkar, learned Additional Public Prosecutor, on instructions of the jail officials present in the Court, was fair enough to admit that no such explanation was obtained from the petitioner.* ***Inquiry into the prison offences is of a quasi judicial nature and hence, they will have to follow the principles of natural justice.*** *In the instant case, there is no question of inferring the requirement of following the principles of natural justice.* ***The statute has, in clear terms, laid down that after obtaining the explanation of the prisoner, punishment can be awarded. Whether the punishment proposed to be imposed is a minor one or a major one as classified under Rule 5 of the Maharashtra Prisoners (Punishment) Rules, 1963, the requirement of seeking explanation from the prisoner is obligatory in all cases. Section 48-A itself has provided what punishment can be awarded and for inflicting any of these punishments, explanation will have to be obtained from the prisoner about his alleged misdeed.***"
>
> (Emphasis added)

Thus, this Court has held that Section 48-A clearly contemplates that principles of natural justice are required to be followed.

27. Perusal of Sub-Rule (2) of Rule 7 of the 2024 Rules shows that the provisions are made in mechanical and arbitrary manner and there is no scope of offering explanation, if any, for overstay or for consideration of said explanation. Thus, there is great substance in the contention raised that said Sub-Rule (2) of Rule 7 is violative of Articles 14 and 21 of the Constitution of India.

28. It is significant to note that Section 48-A *inter alia* provides for

punishment for breach of conditions of furlough leave. The said Section 48-A contemplates giving notice to the prisoner for obtaining his explanation and to excuse the prisoner if sufficient cause is shown.

29. The Supreme Court in ***Delhi Transport Corporation v. DTC Mazdoor Union, AIR 1991 SC 101***, held that the *audi alteram partem* rule, in essence, enforces the equality clause in Article 14 and it is applicable not only to quasi-judicial bodies but also to administrative orders adversely affecting the party in question unless the application of the rule has been excluded by the Act in question.

30. In ***State Bank of India Vs. Rajesh Agarwal, (2023) SCC OnLine SC 342***, the Supreme Court affirmed that natural justice - particularly *audi alteram partem* and held that it is now settled principle of law that the rule of *audi alteram partem* applied to administrative actions, apart from judicial and quasi-juidical functions , even if the statute itself is silent on the requirement of hearing.

31. The discussion of the Supreme Court in ***C.B. Gautam Vs. Union of India and Others*** reported in ***(1993) 1 SCC 78*** is also relevant, which reads as under :

> 26. ... In the case of *Union of India* v. *Col. J.N. Sinha* [(1970) 2 SCC 458 : (1971) 1 SCR 791, 794-795] the facts were that the first respondent who was in the class I service of the Survey of India and rose to the position of Deputy Director, was compulsorily retired by an order under Rule 56(*j*) of the Fundamental Rules, no reasons were given in the order.

Respondent 1 challenged the order on the ground that it violated principles of natural justice and no opportunity had been given to the first respondent to show cause against his compulsory retirement. A Division Bench of this Court in its judgment in that case observed as follows: (SCC pp. 460-61, para 8)

> "**Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights.** As observed by this Court in *Kraipak, A.K.* v. *Union of India* [(1969) 2 SCC 262 : AIR 1970 SC 150] '**the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it'. It is true that if a statutory provision can be read consistently with the principles of natural justice, the courts should do so because it must be presumed that the Legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is**

conferred and the effect of the exercise of that power."

27. In the case of *Olga Tellis* v. *Bombay Municipal Corporation* [(1985) 3 SCC 545 : 1985 Supp (2) SCR 51, 89] a Constitution Bench comprising five learned Judges of this Court had occasion to deal with the provisions of Section 314 of the Bombay Municipal Corporation Act, 1888. Chandrachud, C.J., (as he then was) delivering the judgment of the Court held that: (SCC p. 581, para 44)

"… (the said section) **confers on the Commissioner the discretion to cause an encroachment to be removed with or without notice. That discretion has to be exercised in a reasonable manner so as to comply with the constitutional mandate that the procedure accompanying the performance of a public act must be fair and reasonable.** (The Court) must lean in favour of this interpretation because it helps sustain the validity of the law."

Chandrachud, C.J., went on to observe as follows:

"It must further be presumed that, while vesting in the Commissioner the power to act without notice, the Legislature intended that the power should be exercised sparingly and in cases of urgency which brook no delay. In all other cases, no departure from the *audi alteram partem* rule ('Hear the other side') could be presumed to have been intended. Section 314 is so designed as to exclude the principles of natural justice by way of exception and not as a

general rule. There are situations which demand the exclusion of the rules of natural justice by reason of diverse factors like time, place the apprehended danger and so on. The ordinary rule which regulates all procedure is that persons who are likely to be affected by the proposed action must be afforded an opportunity of being heard as to why that action should not be taken. The hearing may be given individually or collectively, depending upon the facts of each situation. A departure from this fundamental rule of natural justice may be presumed to have been intended by the Legislature only in circumstances which warrant it. Such circumstances must be shown to exist, when so required, the burden being upon those who affirm their existence."

28. It must, however, be borne in mind that **courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected. This would be particularly so in a case where the validity of the section would be open to a serious challenge for want of such an opportunity.**

(Emphasis added)

32. The above observations are squarely applicable to the present case. It has been specifically observed by the Supreme Court that Courts have generally read into the provisions of the relevant sections a requirement of giving a reasonable opportunity of being heard before an order is made which would have adverse civil consequences for the parties affected. This would be particularly so in a case where the validity of the section would be open to a serious challenge for want of such an opportunity.

33. In case, the prisoner has overstayed then, depending on the said period, the prisoner is deprived of availing the furlough leave from 1 year to 5 years. Thus, the consequences are drastic considering the objectives for grant of furlough leave as per Rule 3 of the 2024 Rules is to enable the prisoner to remain in touch with his family and deal with family matter, to provide relief from the detrimental impact of continuous captivity in prison and to enable the prisoner to remain hopeful about future and to cultivate active interest in life. Thus, it is absolutely essential that depriving the prisoner from availing furlough leave for the period of 1 year to 5 years, it is absolutely essential that opportunity is required to be given to the prisoner to place on record reasons for such overstay. Thus, it is necesarry to read principles of natural justice in Rule 7(2) of said 2024 Rules.

34. However, it is required to be noted that only reading principles of

natural justice in Rule 7(2) will be empty formality if there is no power to reduce the period contemplated under Rule 7(2) if the sufficient explanation is offered. Thus, it is necessary that Rule 7(2) is to be read along with section 48-A of the said Act which contemplated punishment of loss of privileges admissible under the remission or furlough system, which includes loss of privilege for certain period.

35. It is very clear, that requirements as set out in Section 48-A of the said Act, are required to be read in Rule 7 and more particularly Sub-Rule (2) of Rule 7. Thus, it is held that the period as contemplated under Sub-Rule (2) of Rule 7 of eligibility for consideration of furlough leave has to be determined after giving notice to the prisoner seeking his explanation and passing speaking order after consideration of the explanation.

36. Thus, the authorities will have to pass Speaking Order, either reducing the period as provided under Sub-Rule (2) of Rule 7 of the 2024 Rules or completely waiving of the said period or maintaining the said period after considering the explanation offered by the prisoner.

37. Thus, the order rejecting application seeking furlough leave is required to be quashed and set aside.

38. As also, the order dated 26.12.2024 passed by the Deputy Inspector General of Prisons is required to be quashed and set aside as the detailed explanation offered by the petitioner has not been considered while passing the said order dated 26.12.2024.

39. Accordingly, the writ petition is disposed of by passing following order :

(i) Order dated 11.06.2024 passed by Deputy Inspector General of Prisons, Western Division, Pune-6 rejecting application seeking furlough leave of the petitioner is quashed and set aside.

(ii) The Deputy Inspector of Prison, Western Region to decide the application of the petitioner seeking furlough leave afresh, after giving an opportunity to the petitioner of explaining the overstay and after considering the explanation, the Deputy Inspector of Prison shall thereafter pass fresh order either reducing or waiving the period or maintaining the said period prescribed under Sub-Rule (2) of Rule 7 of the Maharashtra Prisons (Furlough and Parole) Rules, 2024 by passing a speaking order after due consideration of the explanation furnished by the petitioner.

(iii) As the explanation offered by the petitioner has not been considered while passing the order under Section 48-A of the Prisons Act, 1894, the order dated 26.12.2024 passed by the Deputy Inspector General of Prisons is quashed and set aside.

(iii) The matter is remanded back to the Deputy Inspector

General of Prisons for fresh consideration and for passing a fresh order in accordance with law, after considering the explanation submitted by the petitioner and if necessary, granting hearing opportunity to the petitioner.

(v) Accordingly, the writ petition is disposed of in the above terms.

(vi) In the facts and circumstances of the case, this exercise be carried out as expeditiously as possible, on or before 31.08.2026.

40. This Court places on record its appreciation for the able assistance rendered by Ms. Neha Deshpande, learned counsel appointed to represent the petitioner as also of Mr. Avinash Naik, learned APP. The High Court Legal Services Committee shall pay professional fees of Rs.25,000/- to Ms. Neha Deshpande.

[PRAVIN S. PATIL, J.] [MADHAV J. JAMDAR, J.]