IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 906 OF 2015

RAMESH KANAIYALAL JAT
VERSUS
THE STATE OF MAHARASHTRA
...
Advocate for Petitioner : Mrs. Meera T. Biradar
APP for the Respondent : Mr. M.M. Nerlikar.

CORAM : S.S. SHINDE & A.M. BADAR, JJ.
DATE : 27th AUGUST, 2015.

PER COURT:

1] Heard.

2] Rule. Rule made returnable forthwith with the consent of parties.

3] This petition is seeking direction to the respondent No.2 to consider and decide the application filed by the petitioner for grant of furlough within a stipulated period. The petitioner is a convict undergoing imprisonment in open jail at Paithan since 23.10.2011. It is the case of the petitioner that he has undergone more than 15 year's actual imprisonment. He was released on furlough time to time and he reported back within time except on one occasion. It is submitted that the prayer of the petitioner for release on furlough leave has been kept pending on the ground that the report of the District Superintendent of Police, Udaypur (Rajasthan) (hereinafter referred to as “D.S.P.”, for short) is not yet received. It is submitted that the petitioner filed application alongwith necessary documents on 18.5.2015. The concerned District Superintendent of Police was supposed to send the report within 45 days. However, merely because said report is awaited, is no ground to keep the application of the petitioner for release on furlough, pending.

4] Learned APP for the State invited our attention to the averments in the affidavit in reply filed on behalf of respondent Nos. 1 to 3. It is submitted that unless report from the D.S.P., Udaypur (Rajasthan) is received, the application of the petitioner cannot be decided. It is submitted that in view of Rule (8) of Chapter 37 of the Maharastra Prison Manual, 1979, unless and until the enquiry report in respect of the petitioner alongwith recommendation from the D.S.P., Udaypur is received, the petitioner's application cannot be considered. It is submitted that the petitioner was released on furlough/parole on 10th May, 2012, however, he did not report back within time. Therefore, the learned APP submits that the application is premature.

5] We have heard the counsel for petitioner, learned APP for State, and with their assistance read the petition alongwith annexures thereto and the affidavit in reply alongwith annexures thereto. It is not in dispute that the concerned jail authority did call the report from the D.S.P., Udaypur. Even on 4.7.2015 and 13.8.2015 remainders were sent, for sending the report with recommendation. However, it appears that the report from the concerned D.S.P., has not received yet.

6] It is right of the petitioner to ask for furlough after gap of certain period as mentioned in the relevant Rules. The concerned authority i.e. D.S.P., Updaypur, was supposed to send the report with recommendation within reasonable time. However, it appears that more than 3 months period has lapsed after filing the application by the petitioner for furlough, yet his application is kept pending on the ground that the report from the D.S.P., Udaypur has not received. In our opinion, keeping in view the relevant provisions under the Bombay Furlough and Parole Rules, 1959 and the scheme thereunder, while dealing with the application by a convict for furlough/parole, it was incumbent upon the authorities to complete the procedure within the time frame as stipulated in the relevant rules.

7] Upon careful perusal of the past record of the petitioner in his reporting back when he was released on furlough/parole, it appears that the petitioner was released on 9th March, 2013 and on his own, he reported back on 31.3.2015 on due date. He was released on 18.11.2013, he reported back on 12.12.2013 on due date. He was again released on 10.9.2014 and he reported back on 15.10.2014 on due date. Therefore, atleast on 3 occasions, in the year 2013 and 2014, when the petitioner was released on furlough, he reported back on due date. It appears that only on one occasion, he overstayed for 28 days. However, he himself reported back on 7.7.2012. Therefore, if the petitioner's past record is kept in view, it is not the case of the respondents that there was any untoward incident during the period when the petitioner was released on furlough leave and he was required to be arrested since he did not reported back on due date. In that view of the matter, in our opinion, the petition deserves to be allowed.

8] In the result, the writ petition is allowed. Respondent No.2 is directed to take final decision on the application of the petitioner as expeditiously as possible and preferably within 3 weeks from today, without waiting for the report and recommendation from the District Superintendent of Police, Udaypur (Rajasthan). We make it clear that the respondent No.2 shall not reject the application of the petitioner for furlough leave on the ground of non receipt of report/recommendation from the D.S.P., Udaypur. If the petitioner fulfills other conditions, he should be released on furlough leave without waiting for the report from the D.S.P., Udaypur (Rajasthan).

9] Rule made absolute in above terms. Parties to act upon authenticated copy of this order.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-