

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1525 OF 2014

Kazi Kamruddin Kazi Zamruddin Farooqui,
Age : Major, Occu. Nil,
Presently in Central Prison, Aurangabad
C. No.7243, District : Aurangabad

...PETITIONER

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

... RESPONDENTS

Advocate for Petitioner : Mr. B. V. Virdhe.
PP for Respondent / State : Mrs. P. J. Bharad

CORAM : S.S. SHINDE & A.M. BADAR, JJ.
DATE : 13TH JANUARY, 2015.

PER COURT:

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

2] This is a petition filed by petitioner through prison authorities of Central Prison, Aurangabad. Petitioner is challenging the order dtd.11.2.2014 passed by the Deputy Inspector General of Police, Central prison, Aurangabad, rejecting his request for release on parole on furnishing cash security of Rs.10,000/- apart from executing personal bond to that extent. Initially, the petitioner was ordered to be released on furlough by the Deputy Inspector General of Prison vide order dtd. 21.1.2014 on furnishing PR bond of Rs.5,000/- and on furnishing solvent surety in like amount.

3] The petitioner then made representation contending that, he is

not in a position to furnish surety and therefore, he be ordered to be released on furnishing cash security of Rs.10,000/-. This representation came to be rejected by the impugned communication dtd.11.02.2014. The order dtd.21.1.2014 was as such confirmed.

4] The petitioner is praying for accepting cash security in lieu of solvent surety. Petitioner is stating that it is not possible for him to furnish surety for his release on parole leave. According to him his relatives have declined to stand as surety for him.

5] We have heard learned APP who pointed out provision of rule 6 of the Prison (Bombay Furlough and Parole) Rules, 1959 and contended that, for seeking furlough leave a person has to furnish surety. Hence, according to learned APP the impugned communication is perfectly legal and correct warranting no interference.

6] We have carefully perused the reply affidavit furnished by the respondent authorities. The purpose of furnishing surety is to secure return of the prisoner who is granted furlough leave. That purpose can be secured even by furnishing cash security. The purpose behind furlough leave is to allow a prisoner to be in company of his relatives and to interact with the society at large. In the case in hand, even on earlier occasion the petitioner was released on furlough leaves and he duly returned in time again after availing furlough leaves. Details of such leave are found in the affidavit in reply filed by the Jail authorities.

7] True it is that Rule 6 of the Rules provides for furnishing surety for availing furlough leave; but, one will have to keep in mind that these rules are in the nature of beneficial legislation and therefore needs to be construed in favour of the petitioner/prisoner. As such, we see no hurdle in allowing the petition by accepting the contention of the petitioner that he be released on furnishing cash security. The object sought to be achieved

will certainly be fulfilled by taking this course of action because even the purpose of surety is to secure return of the prisoner to Prison. Judicial precedents show that such course of action is adopted by this Court even while deciding Criminal Writ Petition no. 461 of 2008, (*Harishchandra Ingale Vs. Superintendent, Central Prison, Aurangabad*) decided on 28th August, 2008, criminal writ petition no. 1250 of 2014, *Rajaram Banduke Vs. The State* decided on 28th November, 2014 by relying ratio of ruling in *Natia Jiria Vs. State of Gujrat and others* reported in 1984 Cri.L.J. 936 and *Dipak Sudhakar Wakalekar Vs. State of Maharashtra and others*, reported in 2011 Cri.L.J. 3263. We choose to follow the same course.

8] In reply affidavit, it is contended that limitation for availing furlough leave is four months after its sanction and as that period expired, the petitioner is not entitled to the relief. However, the petitioner had preferred representation for accepting cash security and thereafter filed this petition for seeking relief. Hence, this contention is without any substance

9] Hence the following order :-

A] Criminal Writ Petition is allowed.

B] Impugned order dtd.11th February 2014 issued by the Deputy Inspector General of Police, Central Prison, Aurangabad is quashed and set aside.

C] Rule made absolute in terms of prayer clause "B" by observing that prison authorities shall accept cash security of Rs.10,000/- instead of surety as directed by order dtd. 21.1.2014. In addition, petitioner shall execute PR bond of Rs.10,000/- for getting furlough leave.

D] It is further clarified that, the amount of cash security shall be forfeited to the State, if the petitioner / prisoner does not return back to the Central Prison after availing furlough leave, as granted.

However, the amount of cash security shall be returned to him if he returns in due time.

E] Parties to act upon authenticated copy of this order.

[A.M. BADAR]
JUDGE

[S.S. SHINDE]
JUDGE.

grt/-