

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 89 OF 2015

Mr. Sanjay Gadekar,
aged 30 years,
prisoner No. 816,
presently lodged at Central Jail,
Colvale, Bardez Goa.
Through his mother Mrs. Vatsala Gurudas Gadekar,
aged 60 years, H.No.122, Gautam Wada,
Bhoma, Banastarim,
Ponda Goa. Petitioner

V e r s u s

1. State of Goa,
Through the Chief Secretary,
Govt. of Goa,
Secretariat,
Panaji Goa.
2. Inspector General of Prisons,
Office of the Collector, North,
Panaji Goa.
3. The Superintendent,
Central Jail, Central Jail,
Colvale, Bardez Goa. Respondents

Ms. Dolorosa Chiquita Tulkar, Advocate for the petitioner.

Mr. S. R. Rivankar, Public Prosecutor for the respondents.

Coram:- F. M. REIS &
K. L. WADANE, JJ

JUDGMENT RESERVED ON : 17.08.2015

JUDGMENT PRONOUNCED ON : 01.09.2015

JUDGMENT (Per K. L. Wadane, J)

Heard Ms. Dolorosa Chiquita Tulkar, learned counsel

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appearing for the petitioner and Mr. S. R. Rivankar, learned Public Prosecutor appearing for the respondents.

2. Rule. Heard forthwith with the consent of the learned counsel.

3. The learned Public Prosecutor waives service on behalf of the respondents.

4. The present petition is filed by the petitioner being dissatisfied with the rejection of his application for furlough.

5. The petitioner is undergoing life imprisonment for the offence punishable under Section 302 of the Indian Penal Code and he has almost completed sentence for about 11 years. The petitioner filed an application for grant of furlough. Under the Goa Prisons Rules, a prisoner sentenced to the life imprisonment is entitled to the furlough on completion of three years of actual imprisonment for a period of 28 days. The application of the petitioner is rejected mostly on two grounds by the respondent no.2. Firstly, the Superintendent of Police, South has inter-alia reported that the villagers are happy to see the prisoner punished for the offence committed by him and strongly opposing for the release of the prisoner on furlough. So also the witnesses who

have deposed in this case are local and there is every possibility that the prisoner can intervene with them for taking revenge and any untoward incident can occur. Secondly, on the ground that the petitioner has been charge -sheeted for the offence punishable under Sections 224 and 511 read with 109 of Indian Penal Code for abetting notorious prisoner Michael Fernandes to escape and presently he is facing trial for the above said offence. Therefore, in view of the provisions of sub rule 4 of Rule 313 of the Goa Prisons Rules, 2006, the application of the petitioner was rejected by the respondent no.2.

6. During the course of the arguments, Ms. D. Tulkar, learned counsel appearing for the petitioner has argued that the criminal trial on the allegation of the offence punishable under Sections 224 and 511 read with 109 of Indian Penal Code is pending. Therefore, it cannot be said that the petitioner had committed any offence at this stage.

7. Mr. S. R. Rivankar, learned Public Prosecutor appearing for the respondents has opposed the petition in view of the offence registered against the petitioner.

8. We have gone through the relevant provisions of sub rule 4 of Rule 313 of the Goa Prisons Rules, 2006 which read as

follows :

“(4). Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak, riot, mutiny or escape, or who have been found to be instigating serious violation of prison discipline”.

9. Looking to the grievance raised on behalf of the respondents, it appears that the allegations against the petitioner for assisting another prisoner to escape from the jail are premature as the trial of such allegations is pending and the petitioner has not been convicted. Therefore, the grounds on which the application of the petitioner came to be rejected appear to be improper.

10. The second ground is that if the petitioner is released on furlough then there is every possibility of any untoward incident which may occur.

11. From the records, it seen that the petitioner was released on parole for about five times and each and every time he has reported back to the jail within a time and no untoward incident was reported during his parole. Therefore, the rejection of the application of the petitioner on that ground is also improper. In such circumstances, we are of the opinion that the petitioner is

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entitled for furlough. Hence, the petition is allowed. The respondent no.2 is directed to release the petitioner on furlough on the conditions that may be imposed by respondent no.2.

K. L. WADANE, J

F. M. REIS, J

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