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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3300 OF 2015

Rajkumar Amrish Rawat ... Petitioner
vs.
The State of Maharashtra ... Respondent

Mr. Prosper D'souza, Advocate appointed for the petitioner.
Mrs. U.V. Kejriwal, APP for the State.

CORAM: MRS. V.K. TAHILRAMANI &
MRS. MRIDULA BHATKAR, JJ.

JUNE 7 , 2016.

ORDER (Per V.K. Tahilramani, J.)

Heard both sides. Rule. By consent, rule is made returnable forthwith.

2. The petitioner had preferred an application for furlough on 1st December, 2014. The said application for furlough came to be rejected on 20th March, 2015. Being aggrieved thereby, the petitioner preferred an Appeal, which came to be dismissed by order dated 8th June, 2015. Hence, this Petition.

3. The Application for furlough came to be rejected mainly on the

ground that the petitioner has been convicted under section 392 of the Indian Penal Code. Hence, in view of Rule 4(2) of Chapter XXXVII of the Prisons (Bombay Furlough and Parole) Rules 1959, the application for furlough came to be rejected.

4. Rule 4 sets out cases when prisoners shall not be granted furlough. Rule 4(2) states that a prisoner shall not be released on furlough if he has been convicted for the offences under sections 392 to 402 of Indian Penal Code. Thus, as the petitioner has been convicted under section 392 of the Indian Penal Code, his Application for furlough was rightly rejected by the concerned authority.

5. The vires of rule 4(2) was challenged before the Division Bench of Gujarat High Court in case of ***Juvansingh vs. State of Gujarat (1973) 14 G L R 104 :*** **MANU/GJ/0101/1972** and the Division Bench upheld the validty of said category. It is held that rule 4(2) is valid and *intra vires* and not vulnerable to the charge of being violative of Article 14 of the Constitution of India. Thus, it is held in **Juvansingh** that the classification is based on the danger inherent in releasing such prisoner and as such has nexus with the object sought to be achieved which is to enable the prisoner to break the shackles as his habit and to protect the Society for

a specified period.

6. We are in respectful agreement with the view taken in the case of **Juvansingh Lakhubhai Jadeja**. Sections 392 to 402 occur in Chapter XVII of the Indian Penal Code and relate to offences of robbery and dacoity. The question is : is there any rational basis for selecting this class of offences for being included in the list of the offences for which convicts should not be enlarged on furlough ? Now, in robbery an element of violence is present along with theft or extortion. Violence is either actually used or attempted to be used either for carrying away of the property or for making the victim part with the property. And when five or more persons conjointly commit or attempt to commit robbery, the offence falls within the description of dacoity. It is obvious that in dacoity five or more persons come together with the avowed object of obtaining property unlawfully by resort to violent means. When so many persons enter upon a life of crime and form a group which is likely to become an organized gang, it is clear that there is great danger in letting them loose. In order to maintain themselves they take to robbery in an organized fashion and it tends to become a habit or a way of life from which it is difficult to make a break. If one who has been found guilty of such an offence is released on furlough,

there is no guarantee that he will not indulge in similar activity as soon as he is let large. None of the twin objects of punishment of imprisonment would then be served. Neither would he be reformed nor would the society remain immunized from his criminal activity for the specified period. It would be dangerous to the society to release him on furlough merely out of considerations of penal reform and humane treatment.

7. Similarly with regard to the lesser offence of robbery, it would be extremely hazardous to let the prisoner loose before the expiry of the term of imprisonment. It would be hazardous to do so because when one abandons honest labour for a career of theft or intimidation coupled with violence (which brings easy money though at some risk) it tends to become a way of life and the temptation is too great to resist when the prisoner is at large. The offences of robbery and dacoity, therefore, fall within a class by themselves. The classification is based on the danger inherent in releasing on furlough those who are proved to have unhesitatingly committed crimes against person as well as property and such crimes by their very nature are habit forming and repetitive. It is, therefore, not possible to say that the classification is irrelevant or that it has no nexus with the objective sought to be achieved. It may be stated that the object is two-fold (1) to enable the

convict to break the shackles of his habit and (2) to immunize the society atleast for a specified period.

8. It was, however, argued by counsel that if a more serious crime like murder was not included in the list, there was no rational basis for including the offences relating to robbery and dacoity within the fold because offence of murder is more serious than the offences under sections 392 to 402 IPC. Here again, the argument ignores the fact that by and large an offence of murder is committed by a person under some real or imagined provocation or in a moment of passion and the perpetrator of the crime usually has a motive or animus against a particular individual or individuals and not against the society at large. There is, therefore, less danger of his committing a similar crime when he is on leave on furlough. Robbery and dacoity are offences which are directed against the entire society at large and the entire society is exposed to the danger emanating from them. In case of murder only that person against whom the perpetrator has a motive or animus alone is exposed to danger from him and not others. So far as robbery and dacoity are concerned, any victim is a good victim and the entire society is exposed to the risk. It is, therefore,

clear that the offences of robbery and dacoity fall in a different category.

9. 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 is 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. This appears to be the object underlying Rule 4 which enjoins that prisoners of the specified categories shall not be enlarged on furlough.

10. In view of the above, as the case of the petitioner falls under Rule 4(2), we are not inclined to grant furlough to the petitioner. Hence, Rule is discharged.

11. Office to communicate this order to the petitioner, who is in Nashik Road Central Prison. The fees to be paid to the appointed counsel are quantified at Rs.2,000/-.

(MRS. MRIDULA BHATKAR,J.) **(MRS. V.K. TAHILRAMANI, J.)**