

IN THE HIGH COURT OF BOMBAY AT GOA.
CRIMINAL WRIT PETITION NO.8 OF 2017.

- 1 Mrs. Cecilia Fernandes, major of age, Indian , H. No.852/1, Oval Park, Porvorim, Bardez, Goa.
- 2 Ms. Gayatri V. Bansode, d/o Mr Vasant Bansode, major of age, Indian resident of Tonca, Miramar, Panaji, Goa. Petitioners.

Versus

1. Inspector General, Prisons, The Inspectorate General of Prisons, Government of Goa, Old Education Building, Panaji, Goa.
2. Addl. Inspector General, Prisons, The Inspectorate General of Prisons, Government of Goa, Old Education Building, Panaji, Goa. Respondents.

Shri R. Menezes, Advocate for the petitioners.

Shri M. Amonkar, Additional Public Prosecutor for the respondents.

Coram:-F. M. REIS,
NUTAN D. SARDESSAI, JJ.

Date:-19th January, 2017.

JUDGMENT (Per Nutan D. Sardesai, J)

Heard Shri R. Menezes, learned Advocate for the

petitioners and Shri M. Amonkar, learned Additional Public Prosecutor for the respondents.

2. Rule.

3. Heard forthwith with the consent of the learned Counsel appearing for the parties.

4. The learned Addl. Public Prosecutor waives notice on behalf of the respondents.

5. Shri R. Menezes, learned Advocate for the petitioners contended that the case of the petitioners was within the ambit of "for sufficient cause" as contained in the 2008 amendment to Rule 324(2) of the Goa Prisons Rules, 2006 and therefore this Court was well within its powers to order the release of the prisoner on parole to participate in his marriage. He adverted to the records of his Civil Registration and the application made to the Inspector General of Prisons i.e the respondent no.2 as early as 1.12.2016 in view of the impending marriage of the prisoner on 27.12.2016 which was not considered by the respondent no.2 and therefore looking

to his conduct and that he had been released several times earlier on furlough or parole, he had to be granted the benefit of parole.

6. Shri M. Amonkar, learned Additional Public Prosecutor for the respondents adverted to the interpretation of Rule 324 of the Goa Prisons Rules, 2006 which provides for emergent situations contained therein to grant parole to a prisoner and that the marriage of the prisoner was not an emergent situation but his own creation and therefore he could not be granted the benefit of parole. Shri R. Menezes, learned Advocate for the petitioners relied in Sanjay @ Gafudiya Vs State of Rajasthan and others,[(2014)3 Crimes(HC) 590] and pressed for the grant of reliefs in the petition.

7. The issue of release of the prisoner on parole primarily hinges on the interpretation of Rule 324 of the Goa Prison Rules, 2006 and as amended in 2008 to take within its sweep any other sufficient cause other than the grounds on which such parole can be granted in favour of the prisoner. It needs reckoning that the contention of Shri R. Menezes,

learned Advocate for the petitioners that the conduct of the petitioners was exemplary and that there were no grievances in that regard despite his release on furlough and parole on earlier occasions did not evoke any submission to the contrary by Shri M. Amonkar, learned Additional Public Prosecutor. Indisputably the prisoner was civilly married to one Gayatri Bansode i.e the petitioner no.2 as per the undisputed Civil Registration Certificate dated 28.11.2016. The petitioners had moved the respondents for the grant of parole for a period of one month for his marriage having completed 11 years and some months of his sentence as a convict imprisoned for life. It was also not in dispute that the marriage of the prisoner was scheduled on 27.12.2016 but for obvious reasons and that the respondents had vide its order dated 4.1.2017 rejected the application on the premise that there was a possibility of breach of peace in the event of his release on parole and that his marriage did not materialize.

8. Rule 324 of the the Goa Prisons Rules, 2006 reads thus:-

“When parole to be granted:- Parole may be granted to a prisoner in the event of

emergent situations like death or serious illness of father, mother, brother, sister, spouse and children and also marriage of brother, sister and children or any other sufficient cause."

The amendment thereto in 2008 and particularly Sub Rule (2) of the Goa Prisons Rules, 2006 provides that parole can be granted for any other sufficient cause and is not limited to the marriage of the brother, sister and children which were earlier the emergent situations contemplated in Rule 324 of the Goa Prisons Rules, 2006 apart from the death or serious illness.

9. Sanjay (supra), who had been awarded the life sentence by the Additional Sessions Judge (Fast Track) Banswara had moved the parole petition before the Rajasthan High Court after serving more than 10 years of the actual imprisonment. His marriage was fixed by his family and in that context he had submitted certain certificates in confirmation thereof and prayed for the grant of 30 days emergent parole particularly for the purpose of his marriage. The factum of his marriage was undisputed and confirmed

from the public records and therefore on the basis of the conduct report which was found to be satisfactory and in the peculiar facts and given set of circumstances, the Division Bench of Rajasthan High Court granted him parole of three weeks on terms and conditions recorded therein.

10. Shri M. Amonkar, learned Additional Public Prosecutor on behalf of the respondents contended that Rajasthan Rules contemplated the grant of parole on the ground of personal marriage which was not contemplated in Rule 324 of the Goa Prisons Rules, 2006. Nonetheless even accepting such a contention, the fact remains that the expression "for any other sufficient cause" would take within its sweep the marriage of the prisoner to order his release on parole. Besides, the expression in Rule 324 is illustrative and not exhaustive. Moreover, an omnibus record in the impugned order that there was a possibility of breach of peace in case he was granted parole cannot stand the test of scrutiny when there were no assertions disputing the fact that he had been earlier enlarged on furlough or parole.

11. Besides, Shri R. Menezes, the learned Advocate for

the petitioners submitted that the marriage of the convict prisoner was rescheduled on 27.1.2017 and accordingly he had to be given the benefit of parole commencing a week prior thereto.

12. We have no hesitation to accept the contention of Shri R. Menezes in the matter of grant of parole. The respondent no. 2 is accordingly directed to examine his request for parole commencing a week prior to 27.1.2017 in consonance with the observations recorded as before.

13. Rule is made absolute in the aforesaid terms.

NUTAN D. SARDESSAI J.

F. M. REIS, J.

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