

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 118 OF 2017

MR. DATTARAM GAWAS, PRESENTLY AT
CENTRAL JAIL, COLVALE., ... Petitioner
Versus
STATE OF GOA, THROUGH THE CHIEF
SECRETARY AND 3 ORS., ... Respondents

Shri Doloroso Chiquita Tulkar, Advocate for the petitioner.

Shri Pravin N. Faldessai, Additional Public Prosecutor for
respondents no.1 to 3.

Coram:- C. V. BHADANG &
PRITHVIRAJ K. CHAVAN, JJ.

Date:- 10th August, 2017

P.C.

The petitioner was tried for offence punishable under Section 302 of IPC and for Section 392 of IPC. For the offence punishable under Section 302 of IPC, the petitioner has been sentenced to suffer life imprisonment and to pay a fine while for the offence punishable under Section 392 of IPC, the petitioner has been sentenced to suffer imprisonment for five years and to pay fine. The petitioner is presently serving his sentence.

2. The petitioner applied for furlough, which has been rejected on the ground that under Rule 313 (2) of the Goa Prisons Rules ("Rules" for short) a convict under Section 392 of IPC is not entitled to be released on furlough.

3. The learned counsel for the petitioner submits that the petitioner has already served sentence for more than 9 years and, as such, the petitioner is served out the sentence awarded under Section 392 of IPC and the disqualification insofar as the release on furlough is concerned, as contained in Rule 313(2) of Goa Prisons Rules, will not apply.

4. On hearing the learned counsel for the petitioner and the learned APP, we find that the learned counsel for the petitioner is justified in saying that once the petitioner has served the sentence awarded under Section 392 of IPC, the disqualification, as contained in Rule 313 (2) of the Rules may not apply. A useful reference in this regard may be made to the judgment of a Division Bench of this Court in the case of Gorakh @ Baba Patole Vs. Govt. of Maharashtra and others 1993(2) Mh LJ 1423 in which in the context of similar Rule contained in the Prisons (Bombay Furlough and Parole) Rules, 1958, it was found that the disqualification may not apply once the sentence awarded under Section 392 of IPC, is served out.

5. In such circumstances, the petition is partly allowed. The impugned order is set aside. We direct the authorities to consider the application filed by the petitioner for furlough on its own

merits, within two weeks from today. The petition is disposed of, in the aforesaid terms.

PRITHVIRAJ K. CHAVAN, J.
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C. V. BHADANG, J.