

IN THE HIGH COURT OF BOMBAY AT GOA.**CRIMINAL WRIT PETITION NO. 103 OF 2017.**

Anthony Rebello Prisoner
No.719/05, Presently serving
sentence at Central Jail Colvale,
Goa

.... Petitioner.

Vs.

1. State of Goa,
Through The IG Prison,
old director of education
building Panaji Goa.

2. PP High Court,
Panaji-Goa.

.... Respondents.

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

Date :-8th September, 2017.

Shri T. John George, Advocate for the petitioner.

Shri P. Faldessai, Addl. Public Prosecutor for the respondents.

JUDGMENT (Per C. V. BHADANG, J)

Rule, made returnable forthwith. Shri P. Faldessai, learned Addl. Public Prosecutor waives service. Heard finally by consent of the parties.

2. The petitioner has been convicted for the offence punishable under Sections 302, 392 and 201 of IPC. For the offence punishable under Section 302 of IPC, he has been sentenced to suffer imprisonment for life alongwith fine, while for the offence

punishable under Section 392 of IPC, he has been sentenced to undergo Rigorous Imprisonment for five years and to pay fine. Lastly for the offence punishable under Section 201 of IPC, the petitioner has been sentenced to undergo Rigorous Imprisonment for three years and to pay fine. Indisputably, the petitioner has undergone imprisonment for more than seventeen years and six months.

3. The petitioner sought his release on furlough. The respondents by an order dated 11.5.2017 has dismissed the application on the ground that under Rule 313(2) of the Goa Prisons Rules 2006("Rules" for short) a prisoner who is convicted for the offence punishable under Section 392 of IPC is not entitled to be released on furlough.

4. The learned Counsel for the petitioner has placed reliance on the decision of this Court in the case of **Gorakh @ Baba Patole Vs. Govt. of Maharashtra and others, 1993(2) Mh. L. J. 1423** and decision in the case of **Mr. Dattaram Gawas Vs State of Goa in Criminal Writ Petition No.118 of 2017** decided on 10.8.2017.

5. The learned Additional Public Prosecutor submits that this Court may pass appropriate order as may be deemed fit.

6. We have considered the circumstances and submissions made.

7. In the case of **Gorakh Baba Patole** (supra), a Division Bench of this Court found that once the prisoner has served sentence awarded under Section 392 of IPC, the disqualification for being released on furlough would, not apply. Placing reliance on the decision of this Court in **Gorakh Patole** (supra) in the case of **Dattaram Gawas** (supra) this Court has taken a similar view.

8. In the present case also the petitioner has served the sentenced of five years awarded under Section 392 of IPC. Had the petitioner been convicted only for the offence under Section 392 of IPC, the petitioner would have been a free bird by now. Hence, the following order:-

ORDER

- i. Petition is partly allowed. The impugned order dated 11.5.2017 is set aside. We direct the authority to consider the application filed by the petitioner for furlough on its own merits, within three weeks from today.
- ii. Petition is disposed of, in the aforesaid terms.

PRITHVIRAJ K. CHAVAN,J.

C. V. BHADANG,J.