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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.5689 OF 2018

Ravasaheb Damu Ghule	... Petitioner
Vs.	
The State of Maharashtra	... Respondent

WITH
CRIMINAL WRIT PETITION NO.342 OF 2019

Nilesh Hiru Gavit	... Petitioner
Vs.	
The State of Maharashtra	... Respondent

None for the Petitioner.
Ms. P.P. Shinde, APP for the Respondent – State.

CORAM : A.S.OKA AND
A.S. GADKARI, JJ.

DATE : 12th FEBRUARY 2019.

ORAL JUDGMENT (Per A.S. Oka, J.)

1 Submissions were heard on the earlier date. In Writ Petition No.5689 of 2018, the petitioner made an application for grant of furlough under the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short “the said Rules of 1959”). By the order dated 6th July 2018, the application for grant of furlough was rejected not on merits but on the ground that though the Competent Authority had offered to allow the petitioner to avail of furlough outside Nashik District, the petitioner declined to accept

the said offer. In Writ Petition No.342 of 2019, the challenge is to a similar order dated 23rd July 2018 passed by another Competent Authority wherein it is mentioned that though the petitioner was offered furlough leave on the condition of staying outside District Palghar, he has declined to accept the said offer.

2 The submission of the learned APP was that in view of Rule 17 of the said Rules of 1959, no legal right is conferred on a prisoner to claim release on furlough. Moreover, the said Rules of 1959 do not prohibit the imposition of such a condition.

3 We have considered the submissions. It is true that Rule 17 of the said Rules of 1959 lays down that nothing in the said Rules of 1959 shall be considered as conferring a legal right on a prisoner to claim release on furlough. However, a Division Bench of this Court in the case of *Sharad Keshav Mehta v. State of Maharashtra and Ors.*¹ held that Rule 17 cannot operate to deprive a right to the prisoner to be released on furlough provided the requirements of the said Rules of 1959 are satisfied. Paragraph 3 of the said decision reads thus :-

“3. The prisoner was convicted on Oct. 11, 1983 and had, admittedly, completed a period of two years on Oct. 14, 1985 and was, therefore, entitled to be released on furlough. **It was urged on behalf of the State Government that R. 17 prescribes that the right to be released on furlough is not a legal right conferred on the prisoner and, therefore, even if the conditions are satisfied, the Government is not bound to release the prisoner on furlough. In our judgment, the submission is entirely devoid of merit. It is not open to the Home**

1. 1988 SCC OnLine Bom 410

Department of the State Government to prescribe rules giving facility of release of the prisoner on furlough by one hand and then providing that the prisoner has no legal right to be released on furlough. In our judgment, R. 17 cannot deprive the prisoner of the substantial right to be released on furlough provided the requirements of the rule are complied with. The submission advanced on behalf of the State Government overlooks the distinction between the right to be released on parole and the right to be released on furlough. Parole is granted for certain emergency and release on parole is a discretionary right while release on furlough is a substantial right and accrues to a prisoner on compliance with certain requirements. The idea of granting furlough to a prisoner is that the prisoner should have an opportunity to come out and mix with the society and the prisoner should not be continuously kept in jail for a considerable long period. The interaction with the society helps the prisoner in realising the folly which he has committed and the liberty which he is deprived of. In modern times the effort is to improve the prisoner and the punishment is to be considered as an action for reformation of an individual. It is futile to suggest that a prisoner should be kept behind the bars continuously and should not be permitted to come out on furlough unless the authorities think it wise. **In our judgment, the State Government has framed rules in exercise of the powers conferred by cls. (5) and (28) of S. 59 of the Prisons Act, 1894 and on framing of such rules, R. 17 cannot deprive the prisoner of the right to be released on furlough. In spite of the enactment of R. 17, we hold that the right to be released on furlough is a substantial and legal right conferred on the prisoner.”**
(emphasis added)

4 In short, every prisoner has a right to ensure that his case is considered for grant of furlough in accordance with the said Rules of 1959 and if furlough is to be denied, the same will have to be on the grounds specified in the said Rules of 1959. If under the said Rules of 1959, he is

entitled to grant of furlough, he cannot be denied furlough on the basis of Rule 17 thereof.

5 Under Rule 3, it is provided that a prisoner is entitled to be released on furlough after periodical intervals for different periods specified in the said Rule depending upon the extent of sentence. Rule 4 lays down that the categories of prisoners mentioned therein shall not be entitled to furlough. Rule 6 mandates that furlough shall not be granted unless sureties are furnished in accordance with the said Rules. The conditions on which furlough can be granted are incorporated in Rule 10.

6 We must refer to a decision of the Full Bench of Gujarat High Court in the case of *Bhikhabhai Devshi v. State of Gujarat and Ors.*². The said decision goes into various aspects including the object of grant of furlough. The said decision lays down that grant of furlough is a matter of right provided grant of furlough is permissible as per the Rules governing furlough. In paragraph 14, the Full Bench of Gujarat High Court has quoted the statements of objects and reasons by which the Prisons Act, 1894 (for short “the Prisons Act”) was amended. As per the said amendment, sub-rule (5) of Rule 59 which confers a rule making power on the State Government was substituted and a provision was made to enable the State Government to frame rules regarding grant of release on parole or furlough. Paragraph 14 of the decision of the Full Bench of the Gujarat High Court reads thus :-

“14. In the Statement of Objects and Reasons for Bombay (Prisons Amendment) Act No.27 of 1953, the Jail Reforms

2. AIR 1987 Guj 136

Committee had recommended and the Govt. accepted the recommendation that -

“there should be the system of release of prisoners on furlough under which well behaved prisoners of certain categories should, as a matter of right have a spell of freedom occasionally after they undergo a specified period of imprisonment, so that they may maintain contact with their near relatives and friends and may not feel uprooted from society. Government accepted these recommendations and also decided that the furlough period should count towards the prisoner’s sentence.

xx xx xx xx

The experience has shown that the system has worked satisfactorily. The Prisons Act, 1894 does not specifically provide for the grant of furlough and the remission of sentence consequent upon it. In order to place the system on a permanent footing and to enable the Govt. to delegate its powers to the Inspector General of Prisons, it is necessary that the Prisons Act, 1894 should be amended in its application to the State of Bombay.”

(emphasis added)

7 Hence, the statement of objects and reasons provides that well behaved prisoners of certain categories should, as a matter of right, have a spell of freedom occasionally after they undergo a certain period of imprisonment so that they can maintain contact with their near relatives and friends and may not feel uprooted from the society. That is the reason why the period of furlough is always counted towards prisoners’ sentence. In the said decision of the Full Bench, the recommendations of Jail Reforms Committee have been quoted. The rationale behind Rule 4 is a measure of penal reform and the object is to humanise penal system. Paragraph 28 of the said decision of the Full Bench is material which reads thus :-

- “28. **The object of parole and furlough rules is to humanise penal system and to enable the prisoner to maintain continuity with his family life and to deal with the family matters and to save him from evil effects of continuous jail life and to enable him to gain self confidence and to maintain constructive hopes and active interest in life.** Since these are the clear objects of furlough system, could it have been intended that the benefit and privilege of furlough should be denied to a prisoner merely on the ground of lateness in surrendering after release on parole or furlough, irrespective of anything and any circumstances justifying or mitigating the default or in any way not showing any tendency to escape or any risk to the society in any manner whatsoever ? It is not possible to hold that irrespective of all these circumstances, such a prisoner surrendering late is totally disqualified from the consideration for release on furlough. The cases of prisoners who have surrendered late have to be examined on merits and the prison authority will have the power, duty and discretion to consider and to grant or refuse furlough and, therefore, the word ‘shall’ in the context of R.4(10) latter part will have to be read as ‘may’.”
(emphasis added)

8 In the case of *Pralhad Gajbhiye v. State of Maharashtra and another*³ in paragraph 16, a Division Bench of this Court held thus :-

- “16. **It is now well settled that furlough and parole have two different purposes. Furlough is a matter of right whereas parole cannot be claimed as a matter of right. Furlough is to be granted periodically under Rule 3 of the Furlough Rules and the principal object of grant of furlough is to enable the prisoner to have family association and to avoid ill-effects of continuous prison life.** While undergoing sentence, in accordance with the Furlough Rules, a prisoner is accorded social inter-action, man being a social animal. Social life is brought into

3 1994 SCC Online Bom 122

existence periodically for a prisoner by providing furlough. Furlough is not provided or granted for any particular reason and if he is not illegible under Rule 4 of the Furlough Rules, furlough has to be granted and even if a disqualification is there under Rule 4, still it is not necessary that grant of furlough shall be refused.”

In paragraph 18, the Division Bench quoted with approval the decision of the full Bench of Gujarat High Court in the case of *Bhikhabhai Devshi (supra)*. We respectfully concur with the view of the full Bench of the Gujarat High Court.

9 Thus, the emphasis is on a prisoner maintaining continuity with his family life, to deal with the family matters and to save him from evil effects of continuous jail life. It helps him to maintain active interest in the life. Thus, one of the main objects of providing for grant of furlough is to ensure that prisoner maintains continuity with his family life so that after his release on undergoing sentence, he is able to resume his family life and family ties. If after release on furlough, the prisoner is told that he cannot enter the place where his immediate family is residing, the very object of grant of furlough will be completely defeated.

10 Going back to the impugned orders in both the cases, the Authorities offered to release the petitioners on furlough subject to condition that they will not enter the respective Districts where their immediate families were residing. Such a condition completely defeats the very object of grant of furlough. We may also refer to Rule 10 which specifies the conditions on which furlough can be granted. Condition No.1 is that the prisoner will remain confined to a particular Taluka in a

particular District and without permission of the District Magistrate or Police Commissioner, as the case may be, he will not leave that particular place. Even this condition suggests that the object of grant of parole is to see that the petitioner enjoys company of his family so that he can maintain his ties with the family. In fact, clause (1) of Rule 10 is other way round which ensures that the prisoner remains confined to his place where his family is residing and without permission of the Authorities, he is not entitled to leave that place. Moreover, clause (6) of Rule 10 imposes a condition of reporting to the officer in-charge of Police Station once in a day. In addition, Rule 11 requires a declaration to be executed by a prisoner released on furlough. Rule 16 provides that furlough period of two weeks and extended furlough of 14 days shall be counted as a remission. As pointed out earlier, under Rule 6, it is provided that prisoners shall not be granted furlough unless he has a relative willing to receive him while on furlough and ready to enter into a surety in the prescribed form as may be fixed by the Sanctioning Authority.

11 Now coming back to the facts of the case, we must note one important aspect which is material. If the Competent Authority wanted to incorporate a particular condition, the Competent Authority could have always done so in the order granting furlough and if the prisoner was aggrieved by the said condition, he had a remedy of appeal. In the present case, the Competent Authority empowered to grant furlough has rejected the application on the ground that the petitioner is not willing to abide by the conditions which were proposed to be imposed. In both the cases, it is also mentioned in the impugned orders that there are adverse police

reports. The perusal of the police reports shows that the same have nothing to do with public peace and tranquility. Moreover, even with such adverse police reports, the Authorities have shown willingness to release the petitioner on furlough. Therefore, adverse police reports in the facts of the present case was no ground for denial of furlough. Thus, it is very clear that while granting furlough, the Competent Authority cannot impose a condition of not entering the place where the immediate family of the prisoner is residing. Hence, in our considered view, the ground on which furlough is rejected cannot be sustained at all and the condition of remaining outside the District where the immediate family of the prisoner is residing is also illegal. Such a condition could not have been imposed.

12 Accordingly, the petition must succeed and we pass the following order :-

ORDER

- (i) The impugned orders in both the case are hereby quashed and set aside;
- (ii) We direct the Competent Authorities in both the cases to pass fresh orders granting furlough subject to terms and conditions which are lawful in the light of the observations made in this judgment;
- (iii) Fresh order shall be passed within a period of two weeks from the date on which this Judgment and Order is uploaded;

- (iv) A copy of judgment shall be forwarded to the petitioners through the Jail Superintendent;
- (v) Rule is made absolute on above terms.

(A.S. GADKARI, J.)

(A.S.OKA, J.)