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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

18 CRIMINAL WRIT PETITION NO.614 OF 2021

AVDHUT @ RAHUL BALU GIRI C-8769

VERSUS

THE STATE OF MAHARASHTRA

...

Petitioner (through Jail)

Mr K. S. Patil, A.P.P. for respondent/State

**CORAM : RAVINDRA V. GHUGE
AND
B. U. DEBADWAR, JJ.**

DATE : 7th June, 2021

ORAL ORDER : (Ravindra V. Ghuge, J.)

1. The petitioner prays for a direction to the Jail authorities to grant him emergency parole under Rule 19 (1) (C) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 (for short “the 1959 Rules), on a P. R. Bond without any surety. He is serving out the sentence of life imprisonment at the Aurangabad Central Jail.

2. The present petitioner had approached this Court in Criminal Writ Petition No.1189 of 2020, seeking emergency parole. By Judgment dated 15/10/2019, this Court concluded that the condition set out in the Government Notification dated 08/05/2020 that an

(2)

applicant should have availed of furlough or parole leave on at least two occasions earlier, so as to make him eligible for the benefit under Rule 19 (1) (C), was unsustainable. This Court concluded that, if a candidate did not avail of furlough or parole leave, in all on two occasions, prior to making an application under Rule 19 (1) (C), it would not amount to an embargo or a disqualification. Since the petitioner had undergone three years behind bars, his petition was allowed and this Court granted him emergency parole on the usual terms and conditions. Furnishing two sureties was a part of such usual terms and conditions.

3. Since this petitioner could not furnish two sureties, he approached this Court in Criminal Writ Petition No.545 of 2021, praying for relaxation in the number of sureties and made a statement that his father was willing to stand surety. Considering his request, this Court, vide order dated 06/05/2021, reduced the number of sureties from two to one. However, now the petitioner has tendered a letter to this Court through the Registrar that as he is unable to furnish even one surety, he should be released on emergency parole on furnishing a personal bond.

4. Rule 6 of the Maharashtra Prisons (Mumbai Furlough And Parole) Rules, 1959 reads as under :

“6. For the Rule 6 of the Principal Rule, the following Rule shall be substituted, namely:-

6. A prisoner shall not be granted furlough unless he can provide a suitable surety willing to receive him. Family members, relatives or friends of the prisoner, if of good antecedents, may stand for him or the Member of local bodies, Police Patil or Registered Medical Practitioner of the home town may if willing and acceptable also be allowed to stand surety. The surety chosen must be willing to enter into a surety bond as in ‘Form A’ appended to these rules for such amount as may be fixed by the sanctioning authority.

Provided that the sanctioning authority may dispense with the requirement for a surety where prisoners are confined in open prisons as defined in clause (b) of rule 2 of the Maharashtra Open Prison Rules, 1971.”

5. The learned Full Bench of this Court dealt with the following issue that was referred to it, in Dipak Sudhakar Wakalekar Vs. State of Maharashtra & ors., 2011 All M.R.(Cri.) 1933 :-

(4)

“Whether as per proviso to Rule 6 of The Prisons (Bombay Furlough and Parole) Rules, 1959, a convict confined in open prison, can be released on parole/furlough by the Authorities by dispensing with the requirement of execution of bond by the relatives?”

6. This Court concluded that the proviso to Rule 6 of the 1959 Rules vests discretionary powers in the sanctioning authority to dispense with the requirement of surety where prisoners were confined in open prisons. The learned Full Bench answered the issue in the affirmative and held that a convict confined in open prison can be released on parole by the authorities by dispensing with the requirement of execution of bond by the relatives.

7. It does not call for any debate that Rule 6 of the 1959 Rules opens with the sentence *“A prisoner shall not be granted furlough unless he can provide a suitable surety willing to receive him”*. The learned Prosecutor submits that the words *“shall not be granted”* reflex the mandate of law and unlike the proviso below Rule 6 which grants discretion to the sanctioning authority with the words *“may dispense with the requirement for a surety”*, no discretion can be read in the scope of the jurisdiction of the sanctioning authority. What

(5)

applies under Rule 6 to furlough, will also apply “*mutatis and mutandis*” to emergency parole or furlough.

8. The significance of a surety has been dealt with by this Court on several occasions. Firstly, there is no judicial pronouncement holding that the proviso to Rule 6 applicable to open prisons, would apply with equal force to inmates of closed prisons.

9. Rules 10, 24 and 28 of the 1959 Rules, read as under :-

“10. Conditions of release.

The sanctioning Authority shall grant furlough to a prisoner subject to his executing a personal bond or giving cash security (the prisoners private cash and wages may be taken as cash security) in Form C appended to these rules and also subject to a surety executing a bond, in form A appended to these rules, if so required. The release may further be subject to all or any of the following conditions :-

- (1)
- (2)
- (3)
- (4)

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(5) *that the said prisoner will surrender himself to the Superintendent of the Prison from which he was released on the expiry of the period of furlough.*

(6)

or

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(8)”.

“24. Conditions subject to which prisoners may be granted parole -

The Competent Authority may grant parole to a prisoner subject to his executing a surety bond and a personal bond in Forms A and B respectively to observe all or any of the conditions mentioned therein and also subject to such other conditions, if any, as may be specified by the Competent Authority:

Provided that when prisoners convicted of serious offences are released on parole, a condition shall be included in the parole order directing or requiring the prisoner to report at the Police Station nearest to the place where he intends to spend his parole initially on his reaching such place and thereafter once or twice a week at such intervals as may be considered expedient:

Provided further that when a prisoner applies for parole for the purpose of appearing at an examination he will not be eligible to be released on parole unless the Inspector General of Prisons

(7)

has passed an order permitting him to appear at such examination.”

28. Application of certain rule to parole cases :-

The provisions of rule 8(5), 10, 11 and 12 shall mutatis mutandis apply in the case of release of prisoners on parole.

10. It is clear from the language of Rule 24 that a prisoner can be released on parole on conditions as are set out in Rule 24. Therefore, parole can be granted by the sanctioning authority/competent authority, subject to the prisoner fulfilling the conditions as are normally made applicable and by executing a surety bond and a personal bond in a manner as is prescribed by the Rules.

11. In **Natia Jiria Vs. State of Gujarat & ors., 1984 Cri. L.J.936 = 1984 (1) G.L.R. 464**, the learned Full Bench of the Gujarat High Court held in paragraph Nos.6 to 9 as under :-

“6. Is it possible to understand the rules as enabling a competent authority to permit availing of furlough leave even without insistence of either cash security or a surety bond? If that is not possible, could the rule be read down so as to avoid insistence on these? If that too is not possible, could the rules be struck down as violating the right of equality? The last of these courses need be considered only if the Court is compelled to

(8)

read the rules as calling for insistence on a surety bond or cash security in all cases and that rule is not capable of being read down in the manner indicated. It is always the function of the Court to construe a rule reasonably and if the provision could be upheld even by reading it down to attempt to do so rather than demolish the same by holding it as unconstitutional.

7. This country has since long awakened to the need for a considerate approach in matters where weaker sections of the society are involved so as to make the guarantee of equal opportunity a reality. Provisions of statutes and rules leaving on arena for exercise of discretion to authorities have always been understood as calling for such exercise on the part of the authorities as will render their functioning constitutional. If discretion is conferred on an authority to waive the requirements of the rules such waiver would be justified to promote the concept of constitutional protection more than anything else. Rule 6 of the furlough rules envisages the availability of a relative willing to receive the prisoner while on furlough and his readiness to enter into a surety bond in Form A for such amount as may be fixed by the Sanctioning Authority. Rule 10 contemplates execution of a personal bond by the prisoner or giving cash security in Form C and also execution of a surety bond in Form A which is the bond referred to in Rule 6, Therefore the requirement of Rule 6 is also embodied in Rule 10. While Rule 6 refers to the readiness to enter into a surety bond in Form A Rule 10 deals with the actual furnishing of the surety bond in Form A. Therefore the two things that have to be done under Rule 10 to enable release to be ordered are (a) personal bond or cash security in Form C, and (b) surety bond in Form A. The first of these a prisoner may be able to do by executing a personal bond. Of course if in respect of a prisoner who is unable to furnish cash security the Sanctioning Authority insists upon such cash security it will be an erroneous, improper

(9)

and unfair exercise by him. It will be equally unfair if, despite the circumstances eloquently speaking to the impecunious situation of the Drisoner, the Sanctioning Authority insists on proof of it, A person in prison is under a great disadvantage and particularly so if he has no friends or competent relatives to help him out. There is no reason why when he pleads his poverty and if there is no material to disbelieve his case of poverty the Sanctioning Authority should not accept it in the normal course and release him on his personal bond. In other words where the Sanctioning Authority has no reason or no materials to positively assume that the man could furnish cash security the sanctioning Authority would be obliged to release him on his personal bond. That is how Rule 10 must be understood as to the first requirement. In the case before us there is no insistence upon cash security. The prisoner has been permitted either to give cash security or personal bond. He could execute the personal bond, but what he is worried about and concerned with is the second requirement, viz. the execution of a surety bond in Form A. He has none to stand surety.

*8. Rule 10, it may be noticed, qualifies the conditions under which the Sanctioning Authority is to grant furlough by the words "if so required". This is quite significant and evidently the relevance of this was not brought to the notice of the learned Judges of the Division Bench on the earlier occasion. The words "if so required" cast a duty and obligation on the Sanctioning Authority to consider whether the case requires waiver of the insistence on the execution of a surety bond. The appropriate justification for such waiver would be where, as in this case, a person is, by reason of his penury and his absence of influence in society, unable to furnish a surety bond. As Krishna Iyer, J. said, though in a different context, in the context of bail, in *Moti Ram v. State of Madhya Pradesh* (AIR 1978 SC 1594): (1978) Cri LJ 1703) "affluents do not befriend indigents". Hence Rule*

10 has to be read and understood as justifying the Sanctioning Authority in waiving the insistence upon a surety bond in cases such as that of the prisoner here.

9. In the view we take of the rule it may not be necessary to consider the validity of the rule and may not even have to read down the rule. Had we been called upon to do so we would have derived support in our attempt to a considerable extent in the following observations of Bhagwati, J., of course spoken again in a different context, in the context of bail, in Hussainara Khatoon v. Home Secretary, State of Bihar ((1980) 1 SCC 81): (1979 Cri LJ 1036). At para 3 of the judgment the learned Judge said :

“3. Now, one reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pretrial detention is our highly unsatisfactory bail system. It suffers from a property oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice. The Code of Criminal Procedure, even after its re-enactment, continues to adopt the same antiquated approach as the earlier Code enacted towards the end of the last century and where an accused is to be released on his personal bond, it insists that the bond should contain a monetary obligation requiring the accused to pay a sum of money in case he fails to appear at the trial. Moreover, as if this were not sufficient deterrent to the poor, the courts mechanically and as a matter of course insist that the accused should produce sureties who will stand bail for him and these sureties must again establish their solvency to be able to pay up the amount of the bail in case the accused fails to appear to answer the charge. This system of bails operates very harshly against the poor and it is

only the non-poor who are able to take advantage of it by getting themselves released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of the bail fixed by the courts is so unrealistically excessive that in a majority of cases the poor are unable to : satisfy the police or the Magistrate about their solvency for the amount of the bail and where the bail is with sureties, as is usually the case, it becomes an almost impossible task for the poor to find persons sufficiently solvent to stand as sureties. The result is that either they are fleeced by the police and revenue officials or by touts and professional sureties and sometimes they have even to incur debts for securing their release or, being unable to obtain release, they have to remain in jail until such time as the court is able to take up their cases for trial leading to grave consequences, namely, (1) though presumed innocent, they are subjected to psychological and physical deprivations of jail life, (2) they are prevented from contributing to the preparation of their defence, and (3) they lose their job, if they have one, and are deprived of an opportunity to work to support themselves and their family members with the result that the burden of their detention almost invariably falls heavily on the innocent members of the family, It is here that the poor find our legal and judicial system oppressive and heavily weighted against them and a feeling of frustration and despair occurs upon them as they find that they are helplessly in a position of inequality with the non-poor.”

12. It was thus held by the learned Full Bench that there could be several cases of convicts not being able to furnish surety bonds due to abject poverty. If a prisoner does not have the means to furnish a

surety bond, and despite having been granted parole, is rendered helpless and continues to languish in jail only on the ground of being unable to furnish a surety bond due to lack of money, the sanctioning authority can exercise its discretion in appropriate cases.

13. In **Chimanrao Baberao Vs. State of Gujarat & ors., 1985 Cri. L.J. (Guj) 211-Full Bench**, the question relating to interpretation of Rule 24 was dealt with by the learned Full Bench and it was held as under :-

- (a) When Rule 24 is read with Rule 28, the provisions of Rule 10 of the 1959 Rules would also automatically get attracted to parole cases.
- (b) In suitable cases, the competent authority will have not only the power but even the duty to release the convict on personal bond once it is found that he cannot get surety to stand for him and he has no money to give cash surety.

In the facts and circumstances of the **Chimanrao Baberao** case (supra), the prisoner was granted parole on executing a personal bond. It was thus settled that seeking parole purely on the basis of a personal bond would not be the

right of a prisoner and it is only in suitable cases subject to the satisfaction of the competent authority that a convict could be granted parole even on a personal bond.

14. In the case of **Vishal Devidas Vs. State of Goa, 2012 (3) Bom. C.R. (Cri.) 115**, the order granting parole to the petitioner for a period of 15 days, imposing different conditions which include a condition that the petitioner should execute a personal bond in 'Form II' for a sum of Rs.1,00,000/- and produce one surety in the like amount giving cash or otherwise, was challenged before this Court on the ground that the petitioner has no source of income to furnish a bond of Rs.1,00,000/- as the petitioner's family does not have such amount nor has financial resources to furnish such surety. While modifying the conditions, this Court concluded in paragraph No.7 as under :-

“7. Considering the facts and circumstances of the case and taking note of the fact that the parole was granted to the petitioner on the medical reason as the wife of the petitioner is reported to be sick and requires assistance of the petitioner. I find that in the interest of justice, the said condition of imposing the personal bond and surety amount of Rs.1,00,000/- deserves to be modified. In the interest of justice and taking note of the financial condition of the

petitioner and his family members, the said amount is reduced to Rs.10,000/-.”

[Emphasis supplied].

15. In the case of **Hardev Prasad @ Pujari Vs. State of (GNCT) Delhi**, Special Leave to Appeal (Cri.) No.1729/2018, the Hon’ble Apex Court (three Judges Bench) delivered an order on 17/04/2018, permitting the petitioner to avail parole on the strength of the Prison Property Account in the name of the petitioner. By this judicial pronouncement of the Hon’ble Apex Court, it is clear that it would not be an anathema to grant parole on the basis of a personal bond. The law developed on this issue would indicate that the sanctioning authority has to be convinced in granting parole on the basis of a personal bond and is expected to consider the case on its own facts and circumstances involved.

16. In **Jitendra s/o Dayaram Jangam Vs. State of Maharashtra through D.I.G. Prison (East), Nagpur & anr.**, Criminal Writ Petition No.137/2018, the learned Division Bench of this Court delivered its order on 21/02/2018, declining to grant the prayer of the petitioner of applying the proviso applicable to open prisons, to the closed prisons. It was held that Rule 6 of the 1959 Rules provided that prisoner shall

not be granted furlough unless he has a relative willing to receive him while on furlough and ready to enter into a surety bond in 'Form A' appended to the Rules for such amount as may be fixed by the sanctioning authority. The proviso to Rule 6 was held to be applicable only to open prisons and not applicable to the prisoners who are not in open prisons. The surety bond in 'Form A' cannot be dispensed with in relation to the prisoners who are not in open prisons, was the decision of this Court.

17. The present petitioner had approached this Court in Criminal Writ Petition No.545 of 2021 and had made a specific request to this Court that he was not able to furnish two sureties and was able to furnish one surety and that the order granting emergency parole dated 15/10/2020 may be modified accordingly. The father of the petitioner was willing to stand surety. Despite the objection of the State, we had considered the request of this petitioner. Since he, as well as his father were unable to secure a second surety over a period of seven months from October 2020 to April 2021, we were convinced and therefore, we modified our earlier order and granted emergency parole to this petitioner on furnishing a surety in the form of his father.

18. In the application placed before us (handwritten by the present petitioner) today, we do not find even a single sentence justifying the request to grant him emergency parole on his P.R. Bond. The only statement made is that his father is a senior citizen and hence he should be released on P. R. Bond. Only one month ago, the petitioner had sought relaxation by assuring us that his father is entering a surety and we granted him this liberty upon trusting him.

19. We are unable to accept the grounds put forth by the petitioner since it was just four weeks ago that we had considered his application sent to us through Jail in Criminal Writ Petition No.545/2021, requesting for acceptance of one surety in the form of his father. In four weeks, circumstances have not changed and we cannot appreciate that only because his father is a senior citizen that we should dispense with the condition of surety.

20. In these circumstances, this petition stands dismissed.

(B. U. DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)