

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION (WP) NO. 596/2022

Mohd. Sagir Bashir Chauhan,
aged about 60 years, Occ: Nil,
Convict No. C-2847,
Presently at Central Prison, Amravati.

..... PETITIONER

// VERSUS //

1. The Deputy Inspector General of
Prisons, Eastern Region, Nagpur.
2. The Superintendent,
Amravati Central Prison, Amravati. RESPONDENT(S)

Mr. Sumit G. Joshi, Advocate (Appointed) for the petitioner
Mr. S.M. Ghodeswar, APP for respondent nos. 1 and 2

**CORAM : SUNIL B. SHUKRE AND
M. W. CHANDWANI, J.J.**

DATED : 23/11/2022

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)

Heard.

2 **Rule.** Rule made returnable forthwith. Heard finally by
consent.

3. An additional reply of respondent no. 2 is taken on record.
On going through it, it becomes clear that this very petitioner has been

released by the Authority on furlough on six occasions in the past. These occasions were of the year, 2008, 2012, 2015, 2016, 2019 and 2021. The reply further shows that on each of the occasions, the petitioner had surrendered himself to the Jail Authority on due date. In other words, there has been not a single occasion when the petitioner has jumped furlough. If, this is the record of the petitioner, we do not understand as to why this time the petitioner has been denied the benefit of furlough leave. We have tried to get some clues in this regard by going through the impugned order. In the impugned order, however, what is stated are the stereotyped reasons which do not satisfy us to say that the petitioner is a kind of person who would not return to Jail, if he is released on furlough. Past conduct of a person like the petitioner in such a matter is very important and unfortunately same has not been considered while passing the impugned order. The impugned order states only generalized reasons like; the crime committed by the petitioner was heinous, there still existed public wrath against the petitioner due to which, if the petitioner was released on furlough, he might face some violence and that, there would be possibility of disturbance of law and order situation, if the petitioner was enlarged on furlough. These reasons do not make any reference to any particular or specific instance on the basis of which one can make a conclusion that the petitioner may face violence out of

public outrage that is still going on against him or that there would be possibility of disturbance of law and order.

4. In Criminal Writ Petition No. 355/2018 filed by this petitioner challenging the order dated 31.01.2018 passed by the D.I.G., Prison, Nagpur rejecting his application for grant of furlough leave for a period of 28 days, this Court took into account past conduct of the petitioner and ruled in favour of the petitioner. It also took into account the nature of proposed sureties and came to the conclusion that the sureties proposed by the petitioner had already undertaken to return the petitioner to the Prison on the due date. These very grounds are available here also and so, we are of the view that this petition too deserves to be allowed.

5. Before parting with the judgment, we would like to emphasize upon the nature of functions and duties to be discharged by respondent no. 1. The petitioner is a prisoner who has been denied furlough leave not on one occasion but, on several occasions, as pointed out by the learned Counsel for the petitioner. The petitioner, as submitted by the learned Counsel for the petitioner, was required to knock at the doors of the Court, every time when there was rejection of his furlough application and on each of the occasions, the impugned order depriving the petitioner of furlough leave has been quashed by this

Court and the petitioner has been directed to be released on furlough leave. Our experience has been that on each of the occasions when the application of furlough leave was rejected, the concerned authority i.e. Inspector General of Prisons, Nagpur had passed stereotyped orders, without there being any application of mind to the available facts. In fact, it is the duty of the Deputy Inspector General of Prisons to exercise his power and discharge his duties by carefully considering all relevant facts and circumstances and the applicable Rules. The applicable Rules are the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short the "Prisons Rules, 1959"). Rule 2 of the Prisons Rules, 1959 confers discretion upon the Deputy Inspector General of Prisons (Regional) to appropriately decide the applications for grant of furlough. The discretion conferred upon the sanctioning Authority i.e. the Deputy Inspector General of Prisons, who is respondent no. 1 here, is not unguided and uncanalized. It is a discretion which is controlled by various provisions made in the Prisons Rules, 1959 and these provisions are to be found to be contained in Rules starting from Rule 4 and ending with Rule 17 of the Prisons Rules, 1959. Detailed procedure is prescribed in Rule 8 of the Prisons Rules, 1959 as to how the applications for grant of furlough leave should be dealt with. Sub-rule 7 of Rule 8 of the Prisons Rules, 1959 makes it mandatory for the Authority to consider the furlough applications and to record the reasons for rejecting the furlough

request and cause the same be conveyed to the concerned prisoner. The requirement of recording of reasons under Rule 8(7) of the Prisons Rules, 1959 is not an empty formality and certainly, is not a license for passing an order recording same old reasons almost like a cliché. It is a well settled principle of law that whenever there is discretion, it comes with responsibility to exercise it reasonably, fairly and in a manner as to fulfill the object of legislation under which it is given.

6. The Prison Rules, 1959, primarily, have three objects to fulfill, which have been pointed out by the Full Bench of the Gujrat High Court in the case of **Bhikabai Vs. State of Gujrat and others [AIR 1987 Guj 136]**. They are as follows:-

“(i) to enable the inmate to maintain continuity with his family life and deal with the family matters;

(ii) to save the inmate from the evil effects of continuous prison life;

(iii) to enable the inmate to maintain constructive hope and active interest in the life.”

7. In the case of **Pralhad D. Gajbhiye Vs. State of Maharashtra [1994 Cri L J 2555]**, the co-ordinate Bench of this Court has reiterated the view taken in the case of **Bhikabai** (supra) wherein, the Division Bench said that the principle object of grant of furlough is to enable the prisoner to have family association and to avoid ill-effects of continuous

prison life. This view has been reiterated in several other judgments of this Court. Thus, the object of Rules relating to grant of furlough to a prisoner is to enable him to communicate himself with his family members intermittently, so that he does not lose his sense of sociability and either becomes a distressed and disturbed man or develops into a hardened criminal. Both these states are dangerous to the welfare of the society. That is the reason why the Hon'ble Shri Justice V. R. Krishna Iyer, in the case of *Indersingh Vs. State of Delhi [AIR 1978 SC 1091]*, found that there was need for issuing certain positive directions in the matter of grant of parole and said “*responsible as the court is to ensure that the deprivation of liberty is accompanied by curative strategy and human dignity.*”

8. The law governing the subject of furlough, as discussed earlier, requires no further elaboration of it here except in saying that the exercise of the discretion in the matter of grant of furlough leave must accord itself to the principles of reasonableness, fairness and also the object of the Rules and it must be exercised for reasons properly recorded with due application of mind to the relevant facts and circumstances of the case.

9. We may point out here some of the consequences of not recording proper reasons with due application of mind by sanctioning

Authority. Whenever, such mechanical orders are passed, inconvenience to the petitioner, delay in finally disposing of such matters and putting additional burden on the State exchequer because of the requirement of the prisoner being provided with Legal Aid at the State expense for challenging the order come as inevitable consequences and casualty of justice follows, which can be avoided. We are, therefore, of the view that the sanctioning Authority under the Prisons Rules, 1959 must ensure to exercise due care and caution in deciding applications for furlough leave, while keeping in view the settled principles of law.

10. However, a request is made by the learned Counsel for the petitioner that as the petitioner has been compelled to approach this Court because of passing of the impugned order in a mechanical manner by respondent no. 1, the costs of the petition should be borne by the concerned Prison Authority. Considering the manner in which the impugned order has been passed, recording some worn out reasons, thereby revealing non-application of mind to the important and relevant facts of the case and also the fact that, this is not the first occasion when the petitioner has been required to experience inconvenience, delay and injustice, we are of the view that prayer made by the learned counsel for the petitioner is reasonable and deserves to be granted.

11. For the reasons stated above, the criminal writ petition is allowed with costs, which shall be paid by respondent no. 2 by depositing it with High Court Legal Services Sub-Committee, Nagpur, with right to recover the same from the concerned officer, in accordance with law. The impugned order is hereby quashed and set aside.

12. Respondent no. 1 is directed to release the petitioner on furlough leave as per his entitlement, subject to such reasonable conditions as may be imposed in the discretion of respondent no. 1 within a period of seven days from the date of receipt of the copy of this order.

13. We direct the High Court Legal Services Sub-Committee, Nagpur to quantify the costs of the petition and inform the same to respondent no. 2 for its due payment by respondent no. 2.

14. We further direct respondent no. 2 to make the payment of quantified costs within a period of seven days from the date of the receipt of the communication in that regard by it.

15. We grant liberty to the Inspector General of Prisons, Pune to consider the recovery of the costs of the petition, in accordance with law, from the concerned officer, if thought fit.

16. Legal remuneration be paid to the learned Advocate (Appointed) for the petitioner as per rules.

17. Rule is made absolute in the aforesaid terms.

(M. W. CHANDWANI, J.)

(SUNIL B. SHUKRE, J.)

SANDIP
MAHADEV
GATE
Personal
Assistant to the
Hon'ble Judge
Digitally signed
by SANDIP
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Date:
2022.11.24
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