



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

981 CRIMINAL WRIT PETITION NO. 239 OF 2024

VITTHAL DIGAMBAR RAUT

VERSUS

THE DEPUTY INSPECTOR GENERAL OF PRISONS AND ANOTHER

...

Advocate for the Petitioner : Mr. A. N. Nagargoje h/f Mr. Chate Sharada
Pundlik

APP for Respondents: Mrs. S.S. Joshi

CORAM : MANGESH S. PATIL &
R. M. JOSHI, JJ.

DATE : 06.02.2024

PER COURT :

Heard both the sides.

2. The petitioner who has been confined to an open prison under Rule 2 (b) of the Maharashtra Open Prisons Rules, 1971 is aggrieved by the condition put in the order granting him furlough leave, directing him to furnish a surety in the sum of Rs. 10,000/-.

3. In the matter of **Dipak s/o Sudhakar Wakalekar Vs. The State of Maharashtra and others (in Criminal Writ Petition No. 848/2010 decided on 04.05.2011)**, following question was referred to the full bench of this Court for a decision :

“Whether as per proviso to Rule 6 of The Prison (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 ?”

4. The Full bench has replied the question in paragraph no. 23, as

under :

“In the light of the discussion made above, we hold that as per the proviso to rule 6 of the Rules 1959 a convict confined in open prison can be released on furlough by the sanctioning authority by dispensing with the requirement of execution of bond by the relatives.

We hold that a convict confined in open prison can be released on parole by the authorities by dispensing with requirement of execution of bond by the relatives.”

5. True it is that as is indicated in the answer to the question, execution of bond by the relatives is a condition which the sanctioning authority has the power to dispense with in the light of proviso to Rule 6 of the Prison (Bombay Furlough and Parole) Rules, 1959.

6. In this regard, it would be appropriate to refer to the observations of the Supreme Court in the matter of **Ameena Begum v. State of Telangana, (2023) 9 SCC 587**, particularly in para No. 78, which reads thus :

“78. Much water has flown under the bridge since then. It is no longer the law that an administrative authority is under an obligation to give a reasoned decision only if the statute under which it is acting requires it to assign reasons. On the contrary, it is only in cases where the requirement has been dispensed with expressly or by necessary implication that an administrative authority is relieved of the obligation to record reasons. Further, the presumption of official acts having been validly performed cannot be pressed into service for upholding the period for which the detention would continue if the order of detention itself suffers from an illegality rendering it unsustainable. That apart, the reasoning of no prejudice being suffered by the detenu because a power of revocation/ modification is available to the Government would not be of any consolation if such power were not exercised at all. In such a case, the prejudice would be writ

large. The decision in Vijay Kumar [Vijay Kumar v. Union of India, (1988) 2 SCC 57] is, therefore, distinguishable.”

Though it was a matter in respect of order of preventive detention, in our considered view, by analogy, the observations can aptly be taken recourse to even in the present matter. When the proviso to Rule 6 does not expressly or by necessary implication dispense with the obligation to record reasons, it is well nigh clear that the impugned order which is sans any reasons for not extending the benefit or for not exercising the discretion in favour of the petitioner would be grossly erroneous.

7. In view of such position in law, if at all the respondent- sanctioning authority was of the view that for whatever reason the petitioner was not entitled to derive the benefit of proviso to Rule 6, it was imperative for the sanctioning authority to expressly assign the reasons for not exercising the discretion in favour of the petitioner.

8. Since the impugned order does not address the aforementioned aspect, insistence of surety without assigning reason would not be sustainable in law.

9. The Criminal Writ Petition is allowed. The impugned condition, insisting for furnishing surety is quashed and set aside.

(R. M. JOSHI, J.)

(MANGESH S. PATIL, J.)

mkd/-