



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 257 OF 2024

Kundan s/o Suresh Pardeshi.

Age : 31 Years, Occ. : Nil Convict No. 9966

R/o. At Shilegaon, Tal. Gangapur,

Dist. Chh. Sambhajinagar

Under Going the sentences in Central Prison,

Chh. Sambhajinagr

.. Petitioner

VERSUS

1. The State of Maharashtra

2. The Dy. Inspector General of ,
Central Prison, Chh. Sambhajinagar.

3. The Additional D.G.P./ Inspector
General of Prison and Correctional
Services Maharashtra State, Pune.

4. The Superintendent of,
Central Prison, Chh. Sambhajinagar.

.. Respondents

...

Advocate for petitioner : Ms. Bharati B. Gunjal
APP for the respondent – State : Mr. V.M. Jaware

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**CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.**

DATE : 16-02-2024

ORDER (MANGESH S. PATIL, J.) :

The petitioner who is suffering sentence of life imprisonment and is lodged in Central Prison, Chhatrapati Sambhajinagar, is challenging the order passed by the respondent – Deputy Inspector General of Central Prisons dated 18-10-2023

refusing him furlough by referring to Rules 4(4), 4(5) and 4(6) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (**'Rules'**). He is also challenging the order passed by the respondent – Inspector General of Prisons dated 26-12-2023, whereby his appeal has also been dismissed.

2. We have heard both the sides.

3. Since both the impugned orders are referring to Rule 4(4), 4(5) and 4(6) of the Rules, it would be appropriate to reproduce the Rules, which read as under :-

"4. Eligibility for furlough :- All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough:-

...

(4) Prisoners whose release is not recommended in Police Commissionerate area by the Assistant Commissioner of Police and elsewhere, by the Deputy Superintendent of Police on the grounds of public peace and tranquility;

(5) Prisoners who, in the opinion of the Superintendent of Prison show tendency towards crime;

(6) Prisoners whose work and conduct are, in the opinion of the Superintendent of the Prison, not satisfactory enough; "

4. Since these are the only three reasons quoted in both the orders for refusing furlough to the petitioner, sustainability of the decisions will have to be decided on the touchstone of these rules.

5. However, though not in the operative part of these orders, both these orders refer to some other reasons for refusing furlough. It

is mentioned that the surety being offered by the petitioner is not a resident of Shillegaon but is resident of Shahapur, Taluka – Gangapur and currently he has been residing in Indraprastha Colony, Bajajnagar, Chhatrapati Sambhajnagar which indicates that the authorities are also relying on Rule 6.

6. These orders also refer to some report of the Superintendent of Chhatrapati Sambhajnagar Central Prison wherein it was informed that he was lodged in a separate cell and did not undertake the work assigned to him. Even the learned APP while arguing the matter, adverted our attention to the report submitted by the Superintendent of Chhatrapati Sambhajnagar Central Prison dated 15-11-2023 submitted to the Inspector General of Prisons refusing recommendation.

7. As we have observed herein-above, both the impugned orders expressly refuse furlough by resorting to Rule 4(4), 4(5) and 4(6), and also Rule 6 we, therefore, propose to deal with those in seriatim.

8. As regards rule 4(4), it is necessary that the Police refuse recommendation on the ground of public peace and tranquility. It is imperative that the opinion to be expressed by the Police should precisely address the issue regarding public peace and tranquility.

There is absolutely no such report expressly mentioning that the element of peace and tranquility was considered by the Police while submitting the report.

9. It appears that when the Deputy Inspector General of Prisons passed the order, petitioner was lodged in Nasik Road Central Prison and subsequently was transferred to the Chhatrapati Sambhajanagar Central Prison with the permission of the concerned Sessions Court, Nasik, on 13-10-2021. Apparently, since thereafter, he has been lodged in Chhatrapati Sambhajanagar Central Prison. The report submitted by the Sub Divisional Police Officer, Gangapur to the Deputy Inspector General of Prisons dated 20-09-2023 does not even whisper about any apprehension in respect of any potential of the petitioner to affect the public peace and tranquility, if he would be released on furlough. It merely refuses the recommendation for other reasons which are not germane to rule 4(4). In the absence of the negative recommendation of Police referring to the basic ingredient of public peace and tranquility, both the orders under challenge would be illegal for relying upon rule 4(4).

10. As regards rule 4(5), there has to be an opinion of the Superintendent of Prison showing tendency of the prisoner towards crime. Interestingly, there are two such reports; one dated 06-09-2023 submitted while the Deputy Inspector General of Prisons was passing

the order, expressly mentioning that the petitioner's conduct was satisfactory and giving a positive recommendation. It appears that a similar recommendation was solicited and forwarded by the Superintendent of Central Prison to the Inspector General of Prisons dated 15-11-2023 vaguely mentioning that in view of the Police report, no recommendation could be made.

11. Rule 4(5) and 4(6) are broadly same inasmuch as the former refers to prisoner's tendency towards crime, the latter refers to the conduct of the prisoner being not satisfactory. Both these decisions have been reached on the basis of the opinion of the Superintendent of Prisons.

12. It is conspicuous that this report is submitted by the same Superintendent of Chhatrapati Sambhajnagar Central Prison, which are inconsistent and separated by barely a period of couple of months. One cannot comprehend as to how, the same Superintendent who submitted a positive recommendation stating that petitioner's conduct was satisfactory, could change his mind within two months. At least a care should have been taken while submitting the second report, which is a negative one, to give details. Both these reports are in tabular form and column no. 17 is provided for expressly mentioning the report by the Superintendent and still the second report merely mentions that

in view of the Police report, he was not recommending grant of furlough.

13. Conspicuously, this second report also does not expressly disclose the ingredients of rule 4(5) and is absolutely devoid of any particulars regarding the petitioner's tendency towards crime. We, therefore, are of firm view that even the ground of Rules 4(5) and 4(6) not available to be resorted to.

14. This leaves us to the additional ground which has not been expressly resorted to by both the authorities, with specific reference to the provision contained in Rule 6. Rule 6 refers to the sureties to be taken while granting furlough and reads thus :

“6. Furlough not to be granted without surety.

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.”

15. It is necessary to repeat that neither of the impugned orders expressly refer to rule 6 and rather in the operative part refused furlough only expressly referring to rule 4(4), 4(5) and 4(6). Assuming

that the authorities have considered even rule 6, it is merely being observed that the surety sought to be furnished by the petitioner was not a resident of Shillegaon but was resident of Taluka - Gangapur, District - Chhatrapati Sambhajinagar and has now been residing in Bajaj Nagar area of Chhatrapati Sambhajinagar.

16. It is not that the surety being furnished is not eligible to stand as a surety. Rather, though rule 6 prescribes who could stand as surety, it does not expressly debar a competent person to stand as a surety. It is only a matter of willingness of the person to stand as a surety, so long as he is willing to enter into a surety bond in the form 'A'. Unless there are other cogent and strong reasons to discard the surety, merely because he is resident of some particular place other than the one mentioned by the petitioner while filling the requisite application seeking furlough, the authorities could not have resorted to this ground. Conspicuously, the petitioner's village Shillegaon also falls in Taluka – Gangapur, whereas village Shahapur of the surety is also falling under the same taluka *albeit*, the surety has been currently residing in Indraprastha Colony of Bajaj Nagar, Chhatrapati Sambhajinagar.

17. We, therefore, hold that even the reasons for not accepting the surety as genuine one, are not sound and sustainable in law.

18. In the circumstances, both the orders under challenge are not sustainable in law and are liable to be quashed and set aside.
19. The writ petition is allowed.
20. Impugned orders are quashed and set aside.
21. Respondent – Deputy Inspector General of Prisons shall pass a fresh order granting furlough to the petitioner as expeditiously as possible and in any case within two weeks.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

arp/