

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.1855 OF 2024

Jamil @ Jammu s/o Abdul Aziz Salar .. Petitioner

Versus

The State of Maharashtra & Ors. .. Respondents

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Mr.Rupesh A. Jaiswal for the Petitioner.

Mr.S.R.Shinde, Spl.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 18th JUNE, 2024

P.C:-

1. The impugned order dated 30/11/2023 has rejected the request of the Petitioner/Prisoner No.6401-Jamil @ Jammu s/o Abdul Aziz Salar on the ground that on an earlier occasion i.e. in the year 2015, when he was directed to be released on temporary bail and he received extension upto 08/08/2016, he was required to be arrested and confined to prison after a delay of 254 days. It is in this background, when the Petitioner made a request for he being released on furlough leave, which is claimed by him, as his right, the same is rejected in the wake of Rule 4 (10) of the Prisons (Bombay Furlough and Parole) Rules, 1959 read with Government Notification dated 16/04/2018.

2. The learned counsel for the Petitioner has invited our attention to the decision of the Full Bench of the Gujarat High Court in the case of *Bhikhabhai Devshi Vs. State of Gujarat*¹, when Rule 4(10) came up for interpretation and recording that the object of Parole and Furlough Rules, which are part of the penal and prison reform, is to humanise the prison system, so as to enable the prisoner to obtain his release, may be for a short prescribed period. By relying upon the report of the All India Jail Manual Committee, which has highlighted the object of such a concession, being to maintain continuity with family and save the inmate from the evil effects of continuous prison life and also to maintain constructive hope and active interest in life, the Full Bench of Gujarat High Court, by referring to the power conferred in the State Government to make such Rules, in exercise of which the Rules were framed, specifically concluded to the following effect :-

“29. As far as the first part of Rule 4(10) is concerned, in respect of prisoners who have escaped or attempted to escape, such prisoners, a class by themselves, cannot be trusted for being released on furlough and, therefore, in such cases, the prison authority would be justified in not considering their request for furlough. However, in cases of late surrender, where there is no element of escape, but merely there is a delay in surrendering, the question will have to be examined on the facts and circumstances and merits of each case. A given case of a prisoner defaulting in timely surrender, who is wanted by the jail authorities and who is not available at the place where ordinarily he should be and who is apprehended by the police or who surrenders because of the chase by the authority, may fall under the first part where he cannot be trusted to be released on furlough again. But such cases are at the other extreme.

30. Other cases of late surrender may be of voluntary surrenders and the lateness may not be unduly long and not without sufficient cause or reason. In such cases sufficiency of causes related to time will certainly have to be considered by the authority. Section 48A itself provides for cases of late surrender. As seen earlier it provides that if any prisoner fails without sufficient

1 1986 Cj (Guj) 39

cause to observe any of the conditions on which his sentence was suspended or remitted or furlough or release on parole was granted to him, he shall be deemed to have committed a prison offence and the Superintendent may, after obtaining his explanation, punish such offence by different punishments including loss of privilege of furlough. Thus, if he shows sufficient cause, it would not be an offence at all. However, even if the cause is not sufficient, the Superintendent will have to consider his explanation and having regard to the insufficient cause or no cause and the degree of gravity of offence in the facts and circumstances of the case, decide about the quantum and nature of punishment. If he does not think it fit to impose the punishment, of forfeiture of furlough and to impose higher punishment, Rule 4(10) cannot be read as a total and automatic prohibition in granting furlough to a defaulting and punished prisoner. That would be clearly and directly contrary to sec. 48A of the Prisons Act, 1894. Rules have to be consistent with the Act and in order to harmonise Rule 4(10) and make it consistent with the mandate of sec. 48A the only way to read the latter part of Rule 4(10) is to hold it to be directory and giving discretion to the authority to consider and to grant or refuse furlough in cases of prisoners who have surrendered late. Any other construction to the contrary, as is canvassed by the respondent authorities would not only make Rule 4(10) latter part unreasonable and arbitrary, but would also directly against sec. 48A of the Act. It is well settled that all the provisions have to be read together and construed harmoniously and this rule can be read harmoniously with the Act so as to achieve the object of the Act and the Rules and the construction which is sought to be placed does not in any way go against any of the objects of the Act or the Rules.”

3. This decision was subsequently followed in a catena of decisions and when before the Division Bench of this Court (Nagpur Bench) in the case of ***Raju @ Rajabhau Bhagwantrao Wankhede Vs. The D.I.F. Prisons (E) (R) & Anr.***², validity of Rule 4(10) came to be assailed, while upholding the same, by recording that it cannot be held to impinge upon the fundamental rights guaranteed under Article 14 or 21 of the Constitution of India and negating the challenge to the said provision, the matter was remanded to the competent authority for consideration afresh. Further in the case of ***Satish***

² 2015 ALL MR (Cri.) 1834

Shankarrao Shinde Vs. The State of Maharashtra³ and another decision in the case of Dhananjay s/o Laxman Thorat Vs. The State of Maharashtra & Ors. (Cri. Writ Petition No.960 of 2019 decided on 09/07/2019), it is categorically held that rejection cannot be on the very same ground that there was delay in surrender and in fact, attaining circumstances should be kept in mind, which include the circumstance as to whether the prisoner surrendered himself or he was required to be arrested.

4. Since by this time, it is a settled position of law that Rule 4(10) does not operate as an absolute bar and attaining circumstances should be kept in consideration and since the Petitioner has been denied the benefit of Furlough leave since 2017, we deem it appropriate to direct the competent authority i.e. D.I.G.(Prison), West Division, Pune to consider the application of the Petitioner, by giving thoughtful consideration to the observations made above.

The decision shall be taken within two weeks from the communication of this order by the learned A.P.P.

5. The Writ Petition stands disposed of in the aforestated terms.

(MANJUSHA DESHPANDE,J.)

(BHARATI DANGRE, J.)

³ 2019 CJ (Bom) 2287