

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1926 OF 2024

Subhash S/o Prahlad Ghogare .. Petitioner
Versus
The State of Maharashtra and ors .. Respondents

Mr. Rupesh Jaiswal for the petitioner.
Mr. D.J. Haldankar, APP for the State.
Mr. B.M. Tadavi, Jailor Group II, Yerwada Central Prison, Pune.

CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.
DATED : 20th JUNE, 2024

P.C:-

1. The convict Subhash Prahlad Ghogare, who stand convicted for committing an offence punishable under Section 302, r/w Section 34 of IPC in Sessions Trial No. 56 of 1995, at the hands of the Sessions Judge, Baramati, is sentenced to life imprisonment and he assert that he has undergone 15 years and 2 months of imprisonment and the total sentence undergone by him including remission is 16 years and 8 months.

He has approached this Court with a specific grievance that since his last return on parole leave i.e. from 22/11/2013, he is not released on furlough and has not even claimed parole leave.

When he preferred an application for being released on furlough, it was rejected by respondent no.2, on 13/06/2023, on the ground that in the past he has surrendered late by 2926 days i.e. on 22/11/2013, after being released on parole leave on 18/08/2005.

Being aggrieved by the said decision he preferred an appeal before respondent no.2 which is also rejected on 3/11/2023 on the very same ground.

2 The two orders dated 13/06/2023, and 3/11/2023 are assailed in the present Writ Petition and the learned counsel Mr. Jaiswal representing the petitioner would submit that, it is more than a decade that he has not been able to see his family members and in order to secure his release on furlough, he is willing to give two solvent sureties and also a cash security of one lakh. He is also ready to abide by the condition of marking his attendance in Indapur Police Station, to ensure his timely return before the Jail Authorities of the Yerwada Jail.

3 The learned APP strongly opposed the request made by the petitioner and has argued in support of the impugned order, by specifically relying upon Rule 4 (10) of the Prisons (Bombay Furlough and Parole) Rules, 1959, which has disentitled the prisoner from availing furlough, in case of prisoners, who have any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at appropriate time, after being released on parole or furlough and further the learned APP submit that the police report is also negative.

4 Mr. Jaiswal has invited our attention to the Full Bench decision of Gujarat High Court in case of *Bikhabhai Devshi Vs State of Gujarat*, AIR 1987 Guj 136 and also to the subsequent decisions of this Court in case of *Dhananjay Laxman Thorat (Criminal Writ*

Petition No.960 of 2019), Santosh Nagargoje Vs. State of Maharashtra (2020) All.M.R. (Cri) 3101 and, Satish Shinde Vs. State of Maharashtra (Criminal Writ Petition No.1535 of 2019).

By relying upon the aforesaid decisions, it is his submission that by denying the benefit of furlough to the petitioner is principally thwarting the whole purpose for which furlough is granted, as the object of furlough is to maintain continuity with the family life and deal with family matters.

5 We are in complete agreement with the learned counsel for the petitioner as, it is evident from The Prisons (Bombay Furlough and Parole) Rules, 1959, that the furlough system has received recognition under the Prisons Act and in *Bikhabhai Devshi Vs State of Gujarat*, the Full Bench of Gujarat High Court by referring to the report by the All India Jail Manual Committee and the objective highlighted in the Model Prison Rule, has categorically highlighted the object in granting furlough and specifically held that, it is necessary to enable the inmate to maintain continuity with his family life and deal with family matters.

Apart from this, one of the prominent object of releasing the prisoner on parole/furlough is to maintain constructive hope and active interest in life.

While construing the term 'shall' used in Rule 4, with a specific emphasis on the furlough system as defined in clause 5(A) of The Prisons Act of 1894 and with special emphasis on Rule 1287 of the Bombay Jail Manual, it is specifically held that the prisoners have a privilege admissible to them under the furlough system and

even though furlough is not an absolute right, nonetheless it is right and privilege admissible and regulated under Rules and it can be granted, refused or withdrawn as per Rules.

6 Dealing with a case of late surrender and whether this would amount to forfeiting the furlough, is held to be completely inconsistent with Rule 5, which entitles the prisoner to avail furlough leave upon expiry of a particular period in a particular year and considering the object of grant of furlough/parole, the provision in the Rule 4(10) is read down as directory and discretionary, so as to make it harmonious and consistent with the statutory provisions of the Act. Recording that Section 48 (A) permit the punishing authority to impose punishments for the offence of late surrender, which shall ultimately be decided by keeping in mind the circumstances and the gravity of late surrender and the authority may decide to impose the punishments other than forfeiture of furlough or impose punishment of part forfeiture of furlough but in any case the furlough will remain due for the prisoner.

7 The aforesaid decision has been consistently followed by this Court and we need not repeat the authorities, which have relied upon the Full Bench decision of Gujarat High Court and held that by virtue of Rule 4(10) though an embargo is imposed in releasing the prisoner on furlough in the contingency set out in clause 10, this would not deprive the prisoner of availing the furlough leave by reading down the word 'shall'.

In *Dhananjay (supra)*, when the petitioner was released on furlough and he turned up in jail by delay of 2719 days, while releasing him on furlough, the Division Bench observed that this

occurred in the month of April, 2010 and since then, the petitioner is continuously in jail and has undergone more than 15 years and 3 months and considering the period of incarceration of 22 years, holding that the act of late surrender was stale, and cannot become ground for rejection of furlough, the prisoner was directed to be released.

In *Ananda Chopade vs. State of Maharashtra*, relying upon the decision of this Court in case of *Satish Shinde vs. State of Maharashtra* and the Full Bench of Gujarat High Court, in case of *Bikhabhai*, the prisoner was directed to be released on furlough, despite the fact that he had enjoyed unauthorized freedom for 4567 days and on the basis of this circumstance alone, his prayer for the furlough was rejected by the Competent Authority.

8 In the present case, in the wake of the late surrender of the prisoner, the petitioner is removed from remission register and not yet restored.

No doubt the petitioner is undergoing a sentence of life imprisonment but it is since his late surrender i.e. on 22/11/2013, he has been continuously incarcerated and has not availed any furlough/parole leave. His continuous incarceration for more than a decade definitely would impact his physical and mental health, particularly when he is unable to rejoin his family, in the moment of happiness and sorrow. Not only this, the ultimate effect of continuous incarceration would definitely loose his faith in system and he would also loose hope to live further and this is the specific reason why the furlough system has been introduced to have a continuity of the life

outside prison and to offer some solace to the prisoner, who is undergoing a sentence of life imprisonment.

Finding that the reasons recorded in the impugned order, despite the fact that for the late surrender the prisoner has already being removed from the remission register, and as he has already undergone 16 years and 8 months of imprisonment including remission, we do not want to keep him away from availing the furlough leave, only because a decade back, he was guilty of not surrendering in time when he was released on furlough.

The Petitioner is ready to offer cash bail and two solvent sureties and his petition is infact accompanied with two affidavits filed by the two local persons, who are ready to furnish solvent sureties to ensure his return within the stipulated period.

Apart from this, he shall also file an undertaking with the jail Superintendent about his return on the expiry of the period of furlough of 28 days which he shall avail from 28/06/2024 to 25/07/2024.

9 By setting aside the impugned order, we direct the petitioner to be released on furlough with effect from 28/06/2024 to 25/07/2024, and he shall surrender to the prison on or before 12:00 noon on 26/07/2024.

He shall furnish two solvent sureties and also offer a cash security of Rs.1,00,000/- before his release. He shall also submit an personal undertaking to the Superintendent Jail undertaking that he shall surrender as directed by this Court and there shall be no delay at his end.

The Petitioner has undertaken to continue to reside at village Survad. Tal. Indapur, Dist. Pune, and accordingly he shall mark his attendance to Indapur Police Station between 4:00 to 5:00 p.m. every alternate day.

Writ Petition is made absolute in the aforesaid terms.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)