

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1927 OF 2024

Omprakash S/o Devandas Khanna }
 Age: 68 years, Occ: Convict, R/o: }
 610 Shivshakti Greens, Near }
 D.K.Sadan, Karvai Naka, Joweli, }
 Badlapur East Mumbai, at present }
 confined in Central Jail Nasik } .. Petitioner
 Road. }

Versus

1. The State of Maharashtra }
 Inspector General of Prisons, }
 Pune. }
 2. Deputy Inspector General }
 of Prisons, Chhatrapati }
 Sambhajinagar. } .. Respondents
 3. Superintendent, Central }
 Jail Nasik Road. }

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Mr. Rupesh A. Jaiswal, for the Petitioner.

Ms S. S. Kaushik, APP, for the Respondent – State.

Ms Suvarna Chorge, Jailor, Group-II, Nashik Jail, is present.

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CORAM: BHARATI DANGRE &
MANJUSHA DESHPANDE, JJ.

DATED : 24th JUNE, 2024

Judgment: (Per Manjusha Deshpande, J.):

1. Rule. Rule made returnable forthwith, by consent of both the parties, the Writ Petition is taken up for final disposal.

2. The Petitioner in the present Writ Petition is confined in the Central Jail, Nasik Road, being convict No. 8671. He has

been convicted under Section 302 of the Indian Penal Code, by the Sessions Judge Kalyan, in Sessions Case No. 24 of 2008, by its Judgment and Order dated 05.02.2011. The Petitioner has been awarded punishment of life imprisonment by the Sessions Court.

3. The Petitioner herein has filed an application for grant of furlough leave on 27.02.2023. His application was forwarded to the Deputy Inspector General (DIG) of Prisons, Chhatrapati Sambhajanagar. On receiving such application, the police report in respect of the petitioner was called from the concerned police station. The said report was received by the office of the DIG Prisons, Chhatrapati Sambhajanagar on 05.04.2023, which mentions that, the friend of the petitioner Raju S/o Nana Ubale is ready to give surety to the petitioner alongwith one another person Kabirkant S/o Omprakash Khanna. Both of them are ready to give surety during the stay of the petitioner on the furlough leave. In spite of positive police report, his application for grant of furlough leave has been rejected by the DIG Prisons, Chhatrapati Sambhajanagar, by the order dated 01.05.2023.

The reason for refusing him the furlough leave, by the concerned authority is that, while the petitioner was released on furlough leave previously by order dated 13.03.2012, he had not reported back to the prison within time. He had not surrendered to the prison authorities, as per the undertaking given by him and as per the Rules for grant of furlough leave. There is a delay of about 2008 days in surrendering to the

prison authorities. He was required to be searched by the police authorities and after he was arrested by the police authorities, he had been taken in custody on 23.12.2017. Therefore considering his past record, the application of the petitioner for furlough leave has been rejected by the concerned authorities.

While passing the said order under challenge, the Competent Authority has referred to Chapter – XXXVII of the Maharashtra Prisons Manual, 1979 and Rule 4(10) of The Prisons (Bombay Furlough and Parole) Rules, 1959. It is mentioned in the said order that, in exercise of his powers under Rule 4(10) of the Rules, 1959, the application of the petitioner has been rejected.

4. The petitioner being aggrieved by the said order of DIG Prison, Chhatrapati Sambhajinagar, dated 01.05.2023, has filed Appeal to the Additional Director General of Police and Inspector General of Prisons, Correctional Services, Maharashtra State, Pune-1. By order dated 27.10.2023, the Appeal of the petitioner has been rejected by the said Appellate Authority, maintaining the order passed by the DIG Prisons.

5. The petitioner has approached this Court challenging the two orders passed by the respondent Nos. 1 and 2, with a prayer to quash and set aside the said orders. The appeal of the petitioner has been solely rejected on the ground of delay of 2008 days in surrendering after being released on parole by

the Competent Authority. The rights of the petitioner as far as furlough leave is concerned, is governed by the Prisons (Bombay Furlough and Parole) Rules, 1959. Rule - 4 is the provision for grant of furlough leave to the prisoners, which contains eligibility as well as grounds on which the prisoner shall not be considered for release on furlough.

For ready reference, the Rule - 4 reads as under:

4. When prisoners shall not be granted furlough.

The following categories of prisoners shall not be considered for release on furlough :-

(1) Habitual prisoners.

(2) Prisoners convicted of offences under sections 392 to 402 (both inclusive) of the Indian Penal Code.

(3) Prisoners convicted of offence under the Bombay Prohibition Act, 1949.

(4) Prisoners whose release is not recommended in Greater Bombay by the Commissioner of Police and elsewhere, by the District Magistrate on the ground of public peace and tranquility.

(5) Prisoners who, in the opinion of the Superintendent of the prison show a tendency towards crime.

(6) Prisoners whose conduct is in the opinion of the Superintendent of the Prison, not satisfactory enough.

(7) Prisoners confined in the Ratnagiri Special Prison [other than prisoners transferred to that prison for jail services].

(8) Prisoners convicted of offences of violence against person or property committed for political

motives, unless the prior consent of the State Government to such release is obtained.

(9) A prisoner or class of prisoners in whose case the State Government has directed that the prisoner shall not be released or that the case should be referred to it for orders.

(10) Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough."

6. The case of the petitioner has been categorised under 4(10) of the Rules, 1959. The said Sub-Rule 10 of Rule- 4 provides that, the prisoners who have been released on furlough, but who have defaulted in any way in surrendering themselves at appropriate time after being released on parole or furlough, shall not be considered for grant of furlough leave.

7. A similar question fell for consideration of a Full Bench of Gujarat High Court in case of ***Bhikhabhai Devshi V/s. State of Gujarat and Ors.***¹ The full Bench, while interpreting the word "shall" used in Rule- 4 in context with provision of Rule - 4(10), has been pleased to hold that, the word "shall" will have to be read as "may" and the said Rule is directory and not mandatory. Therefore, it was not mandatory on the part of the authorities to reject the application for Furlough merely on the ground that, the prisoner has not surrendered within prescribed time after being released on furlough. While considering this issue, whether it is directory or mandatory, the Full Bench of Gujarat High Court has gone into the depth of

¹ AIR 1987 Gujarat 136

the object of the legislature in making rules of Parole and Furlough.

8. The Full Bench has observed that, the Parole and Furlough Rules are part of the Penal and Prison system, they are framed with a view to humanise the prison system. These rules enable the prisoner to obtain his release and to return to the outside world for a short period prescribed in the Order and Rules; It is to enable the inmate to maintain continuity with his family life and deal with family matters; to save the inmate from the evil effects of continuous prison life; to enable the inmate to maintain constructive hope and active interests in life. Therefore, taking into account the Statement of Objects and Reasons for Bombay (Prisons Amendment) Act No. 27 of 1953, the Jail Reforms Committee has recommended and the Government had accepted the recommendation for a system of release of prisoners on furlough, so as to make them available spell of occasional freedom, after they undergo a specified period of imprisonment.

9. Taking note of the said Statement of Objects and Reasons, the Full Bench of Gujarat High Court has ruled that, the word “shall” used in Rule- 4 will have to be read as “may”. The prison authorities cannot reject the request for furlough leave of the prisoner who has surrendered late in the past. The authorities have the powers and it is their duty to consider grant or refuse such furlough leave to the prisoner, having regard to the facts and circumstances of each case, including the fact that the prisoner had surrendered late in the past.

10. Following the said judicial pronouncement and law laid down in the said Judgment which was decided on 28.08.1986, there are various judgments and orders passed by this Court on the basis of the said Judgment, to name them a few, ***Raju @ Rajabhau Bhagwantrao Wankhede V/s. The D.I.G. Prisons (E) (R) and Anr.***², ***Indrajit Vasantrao Gadgile V/s State of Maharashtra and Anr.***³. The learned counsel for the petitioner has placed on record the copies of the said judgments relied by him.

11. The learned APP has supported the orders passed by the respondent Nos. 1 and 2. The learned APP has placed on record the nomination chart of the petitioner indicating the offence committed by him; the date of offence; the conduct of the petitioner while in prison; his remission and record of his parole and furlough leave if at all availed by him. On going through the said chart, it is evident that the petitioner has so far not availed parole leave and he has availed the facility of furlough leave only once when he was released on 13.03.2012, and he had not surrendered within time. The petitioner had been apprehended by the police authority and he had been taken in custody on 23.12.2017. However, thereafter it is more than five years, he has not been released on furlough. The application of the petitioner has been rejected by both the authorities resorting to Rules 4(10) and 4(20) of the Rules, 1959.

12. Having regard to the various orders which the petitioner has placed on record and the Statements of Objects and Reasons

2 2015 ALL MR (Cri) 1834

3 2015 ALL MR (Cri) 1840

for Bombay (Prisons Amendment) Act No. 27 of 1953, the very object of framing the Rules would be frustrated if such interpretation of Rule- 4(10) is allowed.

13. In view of the above mentioned position of law which is reflected in various judicial pronouncements, in our opinion, the impugned orders passed by the respondent Nos. 1 and 2 are required to be quashed and set aside. Apart from the reason of not surrendering by the concerned authority within time, there is no other impediment in release of the petitioner. Hence, we pass the following order:

:ORDER:

(i) The order passed by the Respondent Nos. 1 and 2 dated 27.10.2023 and 01.05.2023, are hereby quashed and set aside.

(ii) The Respondents are directed to release the Petitioner on Furlough Leave, subject to usual terms and conditions as required under the Rules.

Rule is made absolute in the above terms.

(MANJUSHA DESHPANDE, J.)

(BHARATI DANGRE, J.)