
(2013) 02 BOM CK 0001

In the Bombay High Court

Case No : Criminal Writ Petition No. 42 of 2013

Abdul Bashid Abu Sayad Chand Pasha

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Citation : (2014) ALLMR(Cri) 186

Hon'ble Judges : S.B. Deshmukh, J;M.T. Joshi, J

Bench : Division Bench

Advocate : Ujjwal S. Patil, for the Appellant; S.G. Nandedkar, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Deshmukh, J.—Rule. Rule made returnable forthwith. Heard finally, with the consent of the parties at the stage of admission. Learned counsel for the petitioner, Mr. Ujjwal Patil, points out the communication addressed to the Hon'ble the Chief Justice of Bombay High Court, dated 8.1.2013. In this application itself, the petitioner-prisoner has clarified that earlier he had made an application seeking furlough, however, said application was rejected. Rejection by the authorities at that time, was challenged by the present petitioner by filing Criminal Writ Petition No. 410 of 2012. Said Petition has been heard and disposed of by this Court (Coram: A.H. Joshi and A.V. Nirgude, JJ.) on 14.6.2012 when furlough was applied by the present petitioner, his prayer was rejected. Said rejection was on the ground that he is not entitled or eligible to avail the said concession by virtue of Sub-clause (4) and Sub-clause (10) of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959. This Court, in that order, reproduced clause (10). Said Writ Petition, considering the facts, came to be dismissed, holding that the petitioner has no right of claiming concession of furlough, as a legally enforceable right.

2. Mr. Nandedkar, learned A.P.P. has made available copy of the order of rejection dated 28.9.2012. It is marked by letter "X" for the purpose of identification,

taken on record, copy of which has been served on Mr. Patil, Advocate (appointed).

3. With the assistance of the learned counsel for the parties, we have noticed from the order passed by D.I.G. of Prisons, Aurangabad that the application made by the present petitioner for grant of furlough was forwarded to the Office concerned, calling for their reports. It is evident from paragraph No. 2 of the order impugned dated 28.9.2012, that petitioner-prisoner was absconding for about 893 days (2 years 5 months and 13 days) and ultimately was arrested by the Police at Hyderabad and brought back to the prison. In substance, when the petitioner was on furlough, he did not surrender. Considering this experience and conduct of the present petitioner earlier, adverse report from the Superintendent of Police, Latur alongwith report of the District Magistrate, Latur was received by the authority i.e. D.I.G. (Prisons), Central Jail, Aurangabad.

4. The D.I.G. (Prisons), Aurangabad, considering the conduct of the present petitioner i.e. he did not surrender after enjoying the furlough and was required to be arrested by the Police and brought back to the prison after about 893 days, the authority thought it fit to reject the prayer of the present petitioner of releasing him on furlough. It is stated that the petitioner is not abiding/obeying the rules i.e. rule 4(4), 4(10) of the Prisons (Bombay Furlough and Parole) Rules, 1959 and therefore, is not entitled for release or grant of furlough. It is on this ground, the furlough has been rejected.

5. Learned counsel Mr. Patil, relied on the judgment of this Court in the matter of Santosh Bhagwandin Bachharaj Vs. Superintendent, Central Prison, . A look to the judgment cited on behalf of the petitioner, makes it clear that in that case, the petitioner had applied for furlough on 18.10.2002. His application was rejected by the authority by order dated 27.2.2003. In substance, the petitioner in that case did surrender. In these facts, learned Single Judge of this Court in that case thought it fit to consider the case of the petitioner.

6. In the case on hand, the facts are altogether different. This Court, by order dated 14.6.2012 passed in Writ Petition No. 410 of 2012 rejected the application of the present petitioner-prisoner, holding that the petitioner has no right of seeking the concession of furlough as a legally enforceable right. After this order and within 14 days another application for furlough is filed by the petitioner. This rejection is subject matter of the present Petition. In the background of these facts, in our opinion, there is no material change. The ratio of the judgment cited supra, in the facts of the present case, does not apply.

7. In our view, rejection of the prayer for furlough in the case on hand, cannot be said to be perverse, warranting interference by this Court under Article 226 of the Constitution of India. We therefore reject the Writ Petition. Rule discharged. No costs. We quantify the fees payable to learned Advocate Mr. Ujjwal Patil (appointed) at Rs. 1,500/-.