

(2009) 09 GUJ CK 0003
In the Gujarat High Court

Case No : Special Criminal Application No. 1597 of 2009

Ambalal Kalidas Vasava

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Prisons Act, 1894 — Section 46

Citation : (2009) 3 GLH 521

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : Arpit A Kapadia, for the Appellant; Trusha Patel, Assistant Public Prosecutor for Respondent 1 and None for Respondents 2 - 3, for the Respondent

Judgement

D.H. Waghela, J.—The petitioner has, through jail, called into question the order dated 27.02.2009 of I.G.Prisons, whereby penal order for forfeiting the period of remission and future furlough leave is confirmed, when original order to that effect made by the jail superintendent was challenged before the I.G.Prisons. It is stated in the application of the petitioner that the petitioner has already availed of two furlough leaves and was released on three occasions on temporary bail on earlier occasions, but when he was released for fourteen days on temporary bail on 11.04.2007 for the purpose of searching out his daughter, who was missing, he had not returned to jail in time. It is stated that he was at the relevant time being treated by a local doctor in the rural area for serious disease of chickenguinea and he was picked up by the police while he was under treatment. It is further stated that he belongs to a very poor family and there is no male member in the family, who could help them. Therefore, he is required to be allowed furlough, according to the prayer. Learned Counsel, Mr. Arpit Kapadia, who agreed to represent the applicant and assist the Court as an amicus curiae submitted that the jail record and report of good behaviour of the applicant would clearly indicate the consistently bona fide behaviour of the prisoner and serious sickness was a sufficient cause for not being able to observe the conditions on which he was released on temporary bail. He further submitted

that the essential ingredients of the provisions of Section 48-A of the Prisons Act, 1894, were not fulfilled and hence, the impugned order of punishment for breach of condition was illegal and unsustainable in law. Section 48-A reads as under:

48-A. Punishment for breach of conditions of suspension or remission of sentence or of grant of furlough or release on parole.-

If any prisoner fails without sufficient cause to observe any of the conditions on which his sentence was suspended or remitted or furlough or 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-

- (1) a formal warning as provided in clause (1) of Section 46;
- (2) reduction in grade if such prisoner has been appointed an officer of prison;
- (3) loss of privileges admissible under the remission or furlough or parole system: or
- (4) loss of such other privileges as the State Government may by general or special order, direct.

2. Learned A.P.P. fairly conceded, after referring to the jail record, the fact that even after the prisoner being brought to jail by the police, he was taking treatment under the jail dispensary for about four months. It was also seen from the record that the prisoner had taken specific defense of serious sickness at the time the original order imposing the punishment was made by the Superintendent of Jail but neither a proper enquiry was made nor were the defense and representation of the prisoner duly considered. Thus, there was not only violation of the basic principles of natural justice in imposing punishment upon the prisoner but even the impugned order by the higher Authority appeared to have been made without proper application of mind. In view of the proved, continued and prolonged sickness of the petitioner, no punishment u/s 48-A of the Prisons Act, 1894, could have been imposed because the first condition for exercising the power of punishment is that the prisoner must have failed to observe any of the conditions of his release, without sufficient cause. No sooner sufficient cause was made out, the power and jurisdiction to impose punishment could not be exercised and the prisoner could not be deemed to have committed a prison offence. If the explanation of the prisoner were not to be considered, the requirement of obtaining his explanation would become an empty formality and such course of action would run counter to the spirit of the provisions of Section 48-A. The proceeding u/s 48-A of the Prisons Act is a quasi-judicial proceeding entailing penal consequences and, therefore, the spirit and purpose of principles of natural justice should inform the adjudication. Neither a prisoner having sufficient cause for violating the conditions of his release should be unduly visited with penal or civil consequences nor a prisoner feigning sickness or advancing false defenses should be unduly favoured or spared.

3. In the facts and for the reasons discussed hereinabove, the impugned order

dated 27.02.2009 as also original order imposing punishment on the prisoner are set aside. The authorities concerned were required to consider, in the given circumstances, the wherewithal and background of a prisoner coming from an extremely poor family and rural area as also what evidence he could produce from the confines of his imprisonment to substantiate his plea of sufficient cause. It must always be borne in mind that a sophisticated and rich person, if ever he faces such inquiry, could possibly be prepared to prove his case of sufficient cause whereas a poor person belonging to the lowest strata of society and hailing from a rural background can hardly even properly articulate his defense and can be presumed to be unaware about the defenses available to him and any legal aid could be farthest from him. Rule is made absolute accordingly with the direction that the petitioner's case shall be considered for his release on due furlough as if he has made an application therefor and the aforesaid orders and punishment are not in existence. The jail authorities shall be at liberty to make appropriate fresh order for late surrender by the petitioner in light of the observations made hereinabove. The valuable assistance rendered by learned Counsel Mr. Kapadia, in serving the cause of justice is appreciated.