
(2007) 04 BOM CK 0110
In the Bombay High Court
Case No : Criminal W.P. No. 149 of 2007

Anil Laxman Jawade

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 10-04-2007

Acts Referred:

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 4

Citation : (2007) 4 MhLj 25

Hon'ble Judges : D.D. Sinha, J;A.P. Lavande, J

Bench : Division Bench

Advocate : S.A. Jaiswal, for the Appellant; T.A. Mirza, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Rule returnable forthwith. Heard by consent of the respective parties.

2. Learned Counsel for the petitioner has contended that in the instant case on earlier occasions though the petitioner did not surrender on due date and, at times, was required to be arrested by the police and brought him back to the prison, that by itself, cannot be a ground for denying grant of furlough or parole leave to the petitioner in future. It is contended that, in the instant case, the petitioner has applied for grant of furlough leave. However, the Competent Authority has rejected the request of the petitioner vide order dated 5-2-2007 in view of the provisions of Rule 4(10) of the Prison (Bombay Furlough and Parole) Rules, 1959 (hereinafter referred to as "the Rules"). Learned Counsel for the petitioner contended that substantive punishment has already been awarded by the Competent Authority to the petitioner for late surrender. Therefore, the Competent Authority cannot take away his legal right to get furlough leave in future merely because the petitioner did not surrender before the Jail Authorities after expiry of period of parole/furlough leave on earlier occasion.

3. Mr. Mirza, learned A.P.P. for the respondents, on the other hand, supported the impugned order, and has contended that as per Rule 4(10) of the Rules, the petitioner is not entitled to get parole leave since he did not surrender before the Jail Authorities after release on parole/furlough leave on due date and was required to be arrested in order to bring him back to the prison. It is also contended by the A.P.P. that on some occasion though the petitioner surrendered before the Jail authorities, on his own, but not on due date.

4. We have considered the contentions canvassed by the respective counsel. Perused Rule 4(10) of Rules, Rule 4(10) of the Rules reads thus:

It is clear from the provision of category (10) of Rule 4 that a prisoner who has at any time escaped or attempted to escape from lawful custody or has defaulted in any way in surrendering at the appropriate time after release on parole or furlough shall not be considered for release on furlough.

5. A plain reading of the provisions of the Rule makes it crystal clear that under Sub-rule (10) of Rule 4 of the Rules, a prisoner shall not be considered for release on furlough leave if he escapes from lawful custody, makes a default in surrendering on due date. In the instant case, it is not in dispute that when the petitioner was released on furlough leave on 11-5-2002 for 30 days, he did not surrender on due date before the Jail Authorities and he was required to be arrested by police in order to bring him back to the prison. The delay, caused at that time, was of 497 days. When the petitioner was released on furlough leave at a later point of time for two weeks, again he did not surrender on due date and was required to be arrested by the police in order to bring him back to the prison. The delay caused was of 10 days. Thereafter, the petitioner was released on parole leave for a period of 30 days which was extended by 60 days by the Competent Authority. However, the petitioner failed to surrender before the Jail Authorities on due date and surrendered late by 24 days. Learned Additional Public Prosecutor, therefore, contended that the impugned order passed by the Competent Authority is just and proper and is sustainable in law.

6. It is, no doubt, true that from the text of Rule 4(10) though shows that it is mandatory in nature, however, when the same is considered in the context of Rule 9 of the Rules, which entitles the prisoner to make a fresh application for furlough leave after expiry of 6 months from the date of rejection of his previous application, and if both the Rules are read together, the harmonious interpretation which emerges is that the Jail Authorities are entitled, in view of Rule 4(10) of the Rules to reject the application for furlough leave on the ground of late surrender. However, in view of Rule 9 of the Rules, the prisoner can always make a fresh application for furlough leave after six months, and by necessary implication, authorities will have to consider the same, on its own merit.

7. In the backdrop of the above referred facts and legal position, the impugned order passed by the Competent Authority is just and proper and requires no

interference. Therefore, the petition is dismissed.