
(2014) 02 BOM CK 0084

In the Bombay High Court

Case No : Criminal Writ Petition No. 432 of 2013

Balu

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 364(A)

Citation : (2014) ALLMR(Cri) 2413

Hon'ble Judges : V.M. Deshpande, J;S.S. Shinde, J

Bench : Division Bench

Advocate : Ashwini S. Hoge Patil, Advocate for the Appellant; D.R. Kale, A.P.P, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith. By consent heard finally. Heard learned Counsel appearing for the petitioner and learned A.P.P. for the State.

2. The petitioner herein, is undergoing sentence of life in the Open Prison at Aurangabad. He was convicted for the offences alleged against him on 21/04/2003. Therefore, he applied for furlough on 29/03/2013 to the Superintendent of Open Prison, Aurangabad. However, his application is turned down. Hence, this writ petition.

3. In pursuant to the notice issued to the respondents, Mr. Anil Raghunath Wandekar, working as Incharge Superintendent, Aurangabad Central Prison, District Aurangabad has filed affidavit in reply on behalf of respondent Nos. 1 and 2. In paragraph-4 of the said affidavit in reply it is stated that, the application of the petitioner for furlough leave is rejected since respondent No. 2 held that, the petitioner is convicted for the offence punishable u/s 364(A) read with Section 34 of the Indian Penal Code. In paragraph-5 of the affidavit in reply it is stated that, in the impugned order by which application of the petitioner for furlough leave

has been rejected, does mention that, prisoner convicted "for the offence such as dacoity. terrorist crimes, kidnapping, smuggling etc. are not entitled for release on furlough leave". It is further stated that, in view of amended provision under Rule 4(13) of the said Rules, respondent No. 2 has rightly rejected the application filed by the petitioner.

4. It is not in dispute that, amendment to rules is made by notification dated 23/02/2012 issued by Home Department. By way of the said amendment to Rule 4 of the Prisons (Bombay Furlough and Parole) (Amendment) Rules, 1959, sub-rule (13) is added which reads thus:

(13) Prisoners convicted for offences such as dacoity, terrorist crimes, kidnapping, smuggling including those convicted under the Narcotic Drugs and Psychotropic Substances Act, 1895 (61 of 1985) and foreigner prisoners.

5. Learned Counsel appearing for the petitioner has tendered across the bar communicated received by the relatives of the petitioner from the Home Department. Government of Maharashtra with copies of documents showing that, there was reference of Home Department/Prison-3 regarding opinion of the Law and Judiciary Department that, whether the amended rules of 2012 would apply retrospectively or prospectively. The compilation of the documents tendered across the bar is taken on record and marked "X" for identification. It further appears that, opinion expressed by the Law and Judiciary Department, Government of Maharashtra, is to the effect that, amended rules came into force from 23/02/2012 and has to be given effect from the said date.

6. In the facts of the present case, when the petitioner is convicted way back in the year 2002 and he is undergoing sentence since then, added sub rule (13) to rule 4 of the said rules by notification dated 23/02/2012 issued by the Home Department, could not have been made applicable in the case of the present petitioner. Even otherwise also, as per normal rule of interpretation, if sub-rule (13) is added to rule 4 by notification dated 23/02/2012 issued by the Home Department, would necessarily apply prospectively. Therefore, we are inclined to set aside the impugned order passed by respondent No. 2 and direct respondent No. 2 to consider the application of the petitioner afresh and dispose of the same, as expeditiously as possible, however within one month from the date of receipt of the copy of this order. The writ petition is disposed of to the above extent. Rule made absolute on above terms.