
(2016) 09 BOM CK 0008

In the Bombay High Court

Case No : Criminal Writ Petition No. 910 of 2016.

Bhimappa Barikai, Age : Major, Occu. Prisoner C. No. 4823, District Open Jail Paith - Petitioner @HASH The State of Maharashtra through Secretary, Home Department, Mantralaya, Mumbai

Date of Decision : 14-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 6
Prisons Act, 1894 — Section 59

Citation : (2017) ALLMRCri 660 : (2016) 4 BomCR(Cri) 360 : (2017) 2 MhLJCri 337

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. S.P. Koli, Advocate, for the Petitioner; Mr. K.S. Patil, A.P.P, for the Respondents/State

Final Decision : Disposed Off

Judgement

S.S. Shinde, J.(Oral) - Rule. Rule made returnable forthwith. With the consent of the learned counsel for the petitioner and the learned A.P.P., heard finally.

2. The petitioner is undergoing life imprisonment for the offence punishable under section 302 of the Indian Penal Code (for short, "I.P.C.") in the open prison at Paithan, District Aurangabad. It is the case of the petitioner that during his twelve years period in jail, he has never availed of the furlough or parole. The Deputy Inspector General of Prisons, Central Region, Aurangabad, vide order dated 31st March, 2016, allowed the application filed by the petitioner for grant of furlough. However, the petitioner is asked to execute a surety bond of his relative. According to the petitioner, since he cannot furnish the said surety, he is unable to avail of the furlough.

3. The learned counsel for the petitioner, in support of his contention that the Authority concerned has discretion to dispense with the requirement of furnishing surety bond of the relative and the petitioner can be released on execution of personal bond, invited our attention to Rule 6 of the Prisons (Bombay Furlough

and Parole) Rules, 1959 and also the judgment of the Division Bench of this Court in Kumar Rama Gowda v. The State of Maharashtra and others 2016 ALL MR (Cri) 2809.

4. On the other hand, the learned A.P.P., representing the State, submits that a Circular bearing No. JLM-1012/Pra.Kra.85/Prison-2, dated 24th August, 2012 has been issued by the Government of Maharashtra, Department of Home, Mantralaya, Mumbai, wherein it is provided that in case the convict is released on parole/furlough and wishes to go to the other State to avail of the said parole/furlough, he should provide surety of at least one relative or any other competent surety. The learned A.P.P. submits that in case the petitioner is released on furlough, who hails from the State of Karnataka, without obtaining the surety of his relative, he may not be available to undergo the remaining sentence. He submits that even the report received from the Superintendent of Police, Vijapur is adverse to the petitioner.

5. We have considered the submissions advanced by the learned counsel for the petitioner and the learned A.P.P. appearing for the State. With their able assistance, we have perused the memo of the writ petition, annexures thereto and the relevant Rule from the Prisons (Bombay Furlough and Parole) Rules, 1959 and also the judgment of the Division Bench of this Court in Kumar Rama Gowda (supra).

6. It appears that while dealing with somewhat similar fact situation, this Court, in the case of Kumar Rama Gowda (supra), relying upon the judgment of the Full Bench of Gujarat High Court in the case of Natia Jiria v. State of Gujarat and others, 1984 CRI.L.J. 936 and also the judgment of the Full Bench of this Court in the case of Dipak s/o Sudhakar Wakalekar v. State of Maharashtra and others 2011 CRI.L.J. 3263, has taken a view that in case the convict is not able to execute the surety of his relative/s, respondent No. 2 has discretion to accept the personal bond submitted by the convict and release him on furlough/parole.

7. In the light of discussion in the foregoing paragraphs, we direct the respondents that the period mentioned in the order of release of the petitioner on furlough, dated 31st March, 2016, issued by respondent No. 2, be extended by another four weeks and without insisting for furnishing the surety of petitioner's relative, release the petitioner on execution of personal bond in the amount of Rs. 5000/- (Rupees five thousand). Needless to observe that respondent No. 2 may impose the condition asking the petitioner to attend the nearest Police Station during the period of furlough.

8. Rule is made absolute in the above terms and the writ petition stands disposed of accordingly.

9. Since the learned counsel Mr. S.P. Koli is appointed as Amicus Curiae to prosecute the cause of the petitioner, his fees be paid as per the schedule of fees maintained by the High Court Legal Service Sub-Committee at Aurangabad.