

(2002) 10 BOM CK 0081
In the Bombay High Court
Case No : Criminal W.P. No. 353 of 2002

Bhimrao Nathuji Bhoyar

APPELLANT

Vs

Superintendent, Amravati Central Prison

RESPONDENT

Date of Decision : 29-10-2002

Acts Referred:

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 10, 6

Citation : (2003) BomCR(Cri) 477 : (2003) 1 MhLj 567 : (2003) 3 RCR(Criminal) 352

Hon'ble Judges : J.A. Patil, J

Bench : Single Bench

Advocate : T.H. Udeshi, for the Appellant; D.B. Patel, APP, for the Respondent

Final Decision : Allowed

Judgement

J.A. Patil, J.—Heard Ms. Udeshi, Advocate for the petitioner and Shri Patel, Additional Public Prosecutor for the respondent - State.

2. Rule, By consent heard forthwith.

3. The petitioner is a convict, who has been undergoing sentence for imprisonment for life in Central Jail, Amravati, since 27-6-1996. He was, however, in jail as an under trial prisoner since 23-5-1995. During the last seven years of his imprisonment, the petitioner was granted furlough on five occasions but he could not avail of the same for want of surety. According to the petitioner, there is nobody to stand as surety for him. He has a mother, who is 72 years old and whose eye sight is affected. He has a step brother but he is not interested in standing as surety to the petitioner. The petitioner has, therefore, prayed that the direction should be given for his release on personal bond.

4. On behalf of the respondent, it is contended that furlough was granted to the petitioner but he could not be released on furlough for want of surety. In short, it appears to be a contention of the respondent that furnishing of surety is necessary without which the prisoner cannot avail of the furlough.

5. Shri Patel, learned A.P.P. relied upon Rule 6 of Chapter XXXVII of the Prison (Bombay Furlough and Parole) Rules, 1959, which reads as under:

"Furlough not to be granted without surety. - A prisoner shall not be granted furlough unless he has a relative willing to receive him while on furlough and ready to enter into a surety bond in Form A appended to these rules for such amount as may be fixed by the Sanctioning Authority."

6. Ms. Udeshi, learned Advocate for the petitioner, however, relied upon the provisions of Rule 10, which deals with conditions of release and state-

"The Sanctioning Authority shall grant furlough to a prisoner subject to his executing a personal bond or giving cash security in Form C appended to these rules and also subject to a surety executing a bond, in Form A appended to these rules, if so required. The release may further be subject to all or any of the following conditions :--

(1)to(6)....,""

Ms. Udeshi submitted that furnishing of surety is not mandatory and that in suitable cases, the Sanctioning Authority can grant furlough to a prisoner on his executing a personal bond and dispense with the requirement of furnishing a surety. So far as Rule 6 is concerned, its isolated reading shows that furnishing of a surety bond in Form A by some person on behalf of the prisoner is necessary. Ms. Udeshi, however, submitted that Rule 6 must be read with Rule 10 and according to her, the combined reading of the two rules makes it clear that furnishing surety is not absolutely necessary. In this respect Ms. Udeshi relied upon a Full Bench decision of the Gujarat High Court in Natia Jiria Vs. State of Gujarat and Others, the facts of which case are quite similar to the facts of the present case. In that case, a prisoner had addressed an application to the Chief Justice, complaining that he was unable to take advantage of the order passed by the Inspector General of Prisons, to release him on 14 days furlough leave since such release was made conditional on his furnishing security or deposit of Rs. 100/- as required under the Prison (Bombay Furlough and Parole) Rules, 1959. The said prisoner stated that his father was not alive and that his mother was old and feeble. The prisoner, therefore, requested that he might be released on furlough leave on personal bond. It appears that the matter came up before the Division Bench of the Gujarat High Court, which held that there was no provision in the rules which enable the Sanctioning Authority to waive any of the conditions. The Division Bench felt helpless in granting the relief and referred the matter to the Full Bench. The Full Bench observed that a person in prison is under a great disadvantage and particularly so if he has no friends or competent relatives to help him out. It was further observed that there is no reason why when a person pleads his poverty and if there is no material to disbelieve his case of poverty, the Sanctioning Authority should not accept it in the normal course and release him on his personal bond. The Full Bench held that Rule 10 has to be read and understood as justifying the Sanctioning Authority in waiving

the insistence upon a surety bond in cases where the prisoner is so poor that he is unable to furnish a surety bond of Rs. 100/- and prisoner in such case should be released on his personal bond. The Full Bench put emphasis on the words "if so required" occurring in Rule 10 and observed that these words cast a duty and obligation on the Sanctioning Authority to consider whether the case requires waiver of the insistence on the execution of a surety bond. It was further held that the appropriate justification for such waiver would be where a person by reason of his penury and his absence of influence in the society unable to furnish a surety bond.

7. In the instant case, the petitioner has an old mother of 72 years, whose eye sight is affected. He has a step brother but he does not seem to be interested in the petitioner. Therefore, the petitioner is not in a position to furnish a surety insisted by the Sanctioning Authority. It is pertinent to note that the petitioner could not avail of furlough though the same was granted to him on previous five occasions. Therefore, keeping these facts in view and in the light of the above mentioned Full Bench decision, I am of the opinion that the petition deserves to be allowed otherwise the mere grant of furlough to the petitioner would be illusory.

8. In the result, the petition is allowed. The respondent is directed to grant furlough of 15 days to the petitioner and release him on his executing a personal bond in the sum as might be thought fit in the circumstances of the case, without insisting on the petitioner's furnishing a surety. Needless to say that the respondent shall be at liberty to impose suitable conditions upon the petitioner.

9. Rule is made absolute in the above terms.