

(1987) 02 GUJ CK 0003
In the Gujarat High Court

Bhipat Vira

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 24-02-1987

Acts Referred:

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 4(6), 4(6)

Citation : (1987) 1 GLR 596

Hon'ble Judges : P.M. Chauhan, J;M.B. Shah, J

Bench : Division Bench

Judgement

M.B. Shah, J.—The petitioner has filed this petition praying that the respondents be directed to release the petitioner either on furlough or parole leave. The respondents have opposed this petition.

2. In this case it is an admitted position that the petitioner was convicted on 7-11-1981. On four occasions he was released on parole, and on one occasion, i.e. on 20-9-1985, when he was released on furlough he surrendered late by four days. However, it is significant to note that when the petitioner was released either on parole or furlough at no time any untoward incident or breach of peace took place. It is also an admitted position that since October, 1985, the petitioner is not released on parole or furlough. In this view of the matter, at the time of admitting the petition we passed the following interim order on 17-2-1987:

Rule, returnable on 24th February, 1987. By way of interim order it is ordered that the petitioner be released for fourteen days. Whether this release should be considered as furlough or parole leave would be decided at the time of final hearing of this matter.

3. In the affidavit-in-reply filed on 20-2-1987 by Mr. H.V. Doshi, Administrative Officer in the Office of the Inspector General of Prison, it has been pointed out that furlough leave is rejected on 27-1-1987 by the Inspector General of Prison on the ground that the petitioner surrendered late by four days when he was released on furlough in year 1985, and for that reliance is placed on the Full

Bench decision of this Court in Special Criminal Application No. 795 of 1985, decided on 28-8-1986, wherein it has been observed that the authorities have the power and duty to consider the grant or refusal of such furlough due to the prisoner, having regard to the facts and circumstances of the case including the fact that the prisoner had surrendered late in the past and that would be one of the relevant factors to be taken into account.

4. In our opinion, this observation of the Full Bench itself indicates that merely because the prisoner has surrendered late on one occasion it would not mean that for ever he is not entitled to be released on furlough. The authority concerned is required to apply its mind to the facts and circumstances of each case and decide whether the late surrender was grave intentional misconduct on the part of the prisoner. The authority has to consider, inter alia, whether (i) late surrender was voluntary; (ii) lateness in surrender was for unduly long period; (iii) prisoner escaped and police authorities had arrested him after chase; (iv) there is any sufficient cause for late surrender; (v) the cause is insufficient or if there is no cause what is the gravity of the offence; and such other factors including his past record and conduct in jail.

5. Now, in this case, on behalf of the Superintendent, Sabarmati Central Prison, Ahmedabad, one Shri P.M. Patel, Incharge Jailer Group-1, has filed the affidavit-in-reply. It is stated therein that it was the contention of the prisoner before the Jail Authority that he surrendered late by four days when he was released on parole because of his serious illness and physical weakness. He had also produced the medical certificate dated 4-10-1985 of the Medical Officer at Dhari to that effect. The Jail Superintendent, however, did not accept the said certificate on the ground that it was a routine one. In our view, there was no reason or basis for the Jail Superintendent to doubt the said medical certificate. In any case, it cannot be said that the prisoner (petitioner) surrendered late because he intended to escape or to commit some offence or to do something wrong to the society. For some compelling reasons he surrendered late by four days. Further, from the remarks submitted by the Jail Superintendent, it is clear that in years 1983, 1984 and 1985 when the petitioner was released on parole on four occasions he had surrendered on due dates. From these admitted facts, it cannot be said that the petitioner is not entitled to furlough either under Rule 4(6) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (hereinafter referred to as "the Rules") on the ground that his conduct is not satisfactory enough for being released on furlough, or that under Rule 4(10) of the Rules he is not entitled to be released on furlough.

6. The Full Bench of this Court in its aforesaid decision interpreted Rule 4(10) of the Rules, and after taking into consideration the purpose and object of the Parole and Furlough Rules held as under in para 18:

18. From the aforesaid provisions in the Prisons Act, the definitions and the creation of furlough system, there is no doubt that the prisoners have a privilege admissible to them under the furlough system as mentioned in Rule 2(17) of the

Furlough Rules. Even if furlough is not an absolute right of the prisoner, nonetheless it is a right and privilege admissible and regulated under the rules and it can be granted, refused or withdrawn as per rules.

In paragraph 21 the Full Bench further held:

21. In every case of late surrender, the authority has to take a conscious decision u/s 48-A after duly applying its mind as to what particular punishment or punishments should be awarded. It is open to the authority to impose a punishment of forfeiture of furlough or part thereof, just as it is open to the authority to impose a cut of remission for a particular number of days and the authority may or may not combine the punishments, but whatever punishment the authority ultimately imposes is to be suffered.

The Full Bench negated the contention that because of the late surrender, due furlough would stand automatically forfeited by virtue of operation of Rule 4(10) of the Rules. In the instant case also, it is an admitted fact that at the time of imposing the punishment on the petitioner for late surrender by four days, no order was passed to the effect that the petitioner's furlough would be forfeited. The authority concerned imposed only the punishment of cutting the remission by eight days. It is further in terms held by the Full Bench that taking into consideration the object of furlough system, it cannot be said that the benefit and privilege of furlough should be denied to a prisoner merely on the ground of lateness in surrendering after release on parole or furlough, irrespective of anything and any circumstances justifying or mitigating the default or in any way not showing any tendency to escape or any risk to the society in any manner whatsoever. The Full Bench has considered this aspect in detail. The Full Bench has also taken into consideration the facts that (1) voluntary surrenders and the lateness may not be unduly long; (2) may not be without sufficient cause or reason; and (3) even if it is for insufficient cause or no cause the gravity of the offence is required to be decided before imposing punishment. The Full Bench has given an illustration that if a prisoner defaulting in timely surrender who is wanted by the jail authority, is not available at the place where ordinarily he should be and is apprehended by the police or surrenders because of the chase by the authority may not be trusted to be released on furlough again. It cannot be said that the petitioner's case would fall under any of the aforesaid categories. In our opinion, therefore, without properly considering the ratio laid down by The Full Bench of this Court in the aforesaid decision, the authority concerned has illegally denied the petitioner his right to enjoy furlough leave. The petition, therefore, deserves to be allowed.

8. In the result, the petition is allowed, and it is ordered that the petitioner's release for a period of 14 days be treated as release on furlough leave. Rule is made absolute to the aforesaid extent.