
(2004) 08 BOM CK 0109

In the Bombay High Court

Case No : Criminal Writ Petition No. 283 of 2004

Dadarao Amrut Gaikwad

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 25, 26

Citation : (2005) CriLJ 1836 : (2005) 1 MhLj 716 : (2005) 3 RCR(Criminal) 669

Hon'ble Judges : A.P. Lavande, J

Bench : Single Bench

Advocate : S.A. Jaiswal, for the Appellant; A.S. Fulzele, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Lavande, J.—Rule returnable forthwith. Mr. Fulzele, Additional Public Prosecutor waives notice on behalf of respondents. By consent of the learned counsel appearing for the parties, this petition is taken up for final disposal.

2. The petitioner by this petition seeks extension of parole granted to him by the Divisional Commissioner, Amravati. Extension of parole is sought for two months from 17-5-2004, or in the alternative the petitioner has also prayed that the period from 16-5-2004 to 26-6-2004 i.e. the period during which he did not surrender may be treated as period of parole.

3. The petitioner has been convicted for an offence u/s 302 of Indian Penal Code and sentenced to imprisonment for life and his appeal has been dismissed. The petitioner applied for parole for a period of one month from 15-4-2004 to 16-5-2004 to the Divisional Commissioner, Amravati on the ground that his wife was sick. The parole was granted by respondent No. 2 herein i.e. the Division Commissioner, Amravati. The petitioner did not surrender on 16-5-2004 in terms of order granting parole to the petitioner but he surrendered only on 26-6-2004 and, as such there is delay of 42 days in surrendering to prison.

4. I have heard Mr. Jaiswal, learned counsel for the petitioner and Mr. Fulzele, learned Additional Public Prosecutor for respondents.

5. According to learned counsel for petitioner, the petitioner did not surrender because his house was in dilapidated condition, and it was absolutely necessary for him to repair the same, and as such he could not apply for extension of parole. The learned counsel further submits that this Court in exercise of powers under Articles 226 and 227 of Constitution of India can grant parole and/or extension of parole. The learned counsel submits that it was not necessary for petitioner first to surrender and thereafter apply for extension of parole. If the petitioner was to surrender, he would not be entitled for parole for a period of one year after the expiry of his last parole except in case of illness or death of nearest relative in terms of Rule 19 of the Prisons (Bombay Furlough And Parole) Rules 1959. In support of his submissions, this Court can grant parole or furlough, the learned counsel has placed reliance on unreported judgment of this Court in Criminal Writ Petition No. 178/19 dated 30th June, 2000, Arvind Uttamrao Jadhao v. State of Maharashtra and another unreported judgment of this Court In Criminal Writ Petition 71/96 dated 26th April, 1996, Vineet Suresh Swami v. The State of Maharashtra.

6. Per contra, Mr. Fulzele, learned Additional Public Prosecutor appearing for respondents has invited my attention to Rules 25 and 26 of the Prison (Bombay Furlough and Parole) Rules 1959. ("the Rules" for short). It is appropriate to quote Rules 25 and 26 of the. Rules, which are reproduced herein below:

Rule 25. Extension of the period of parole - The Competent Authority may, on the application made by the prisoner or by his relatives or friends, or legal advisor one week in advance, before the expiry of the period of parole granted, by an order in writing, extend the period of parole for such further period or periods as may be specified in such order, on the same grounds, and on the same conditions on which the prisoner was originally granted parole, or on such other conditions as the Competent Authority may determine;

Provided that the total period of parole so extended shall not exceed ninety days."

Rule 26. Parole order ineffective on prisoner's surrender : "As soon as a prisoner released on parole surrenders to the Prison Authority his original order of release will be inoperative. Where, therefore, a prisoner who is released on parole has applied for the extension of the period of parole and before his application has been sanctioned surrenders himself to the Prison authority, he shall not be released after such surrender without obtaining a fresh release order passed by the Competent Authority."

7. Relying upon Rules 25 and 26 of the Prison Bombay Furlough and Parole) Rules, 1959, Mr. Fulzele submits that it was necessary for the petitioner to seek extension of parole before the expiry period of parole and the petitioner having not applied for extension of parole, the petitioner is not entitled for extension of parole from this Court. Relying upon Rule 26 of the Rules, Mr. Fulzele submitted

that parole order becomes ineffective on prisoner's surrender. In the present case, undisputedly, the petitioner has surrendered on 26-6-2004. As such, according to Mr. Fulzele, the petition is devoid of merit, and as such deserves to be dismissed.

8. I have considered the submissions made by learned counsel for both sides, and I have also gone through the judgments on which reliance are placed by the learned counsel for the petitioner. The ratio laid down in both the judgments cited by the learned counsel for the petitioner is absolutely not attracted to the facts of the present case. I find considerable force in the submission of Mr. Fulzele that in terms of Rules 25 and 26 of the Prisons (Bombay Furlough and Parole) Rules 1959, the petitioner is not entitled for extension of parole after surrendering to the prison without an order of extension having been obtained from the Divisional commissioner, Amravati. In view of Rule 25 of the Rules, it was necessary for the petitioner to seek extension of parole in advance. The petitioner having not obtained the extension, in my opinion, the petitioner is not entitled to relief as sought for in the petition. In view of Rule 26 of the Rules, the order granting parole passed by respondent No. 2 herein has become ineffective and there is no question of extending the said period or treating the said period of 42 days as period of extended parole.

9. In the backdrop of above facts and circumstances, I am of the considered opinion that this petition is devoid of merit and has absolutely no merit. Accordingly, the same is dismissed, with no order as to costs.