

(2003) 01 BOM CK 0105

In the Bombay High Court

Case No : Criminal Writ Petition No. 377 of 2002

Dipak Hari Kivkalwar

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 10, 6
Prisons Act, 1894 — Section 59

Citation : (2003) BomCR(Cri) 480 : (2003) CriLJ 2241

Hon'ble Judges : R.S. Mohite, J

Bench : Single Bench

Advocate : T.H. Udeshi, for the Appellant; Assistant Public Prosecutor, for the Respondent

Judgement

R.S. Mohite, J.—Rule. By consent rule is made returnable forthwith.

2. This is a writ petition impugning an order dated 1-4-2002 passed by the Deputy Inspector General of Prison (Eastern Region), Nagpur rejecting the furlough sought by the present petitioner. The petitioner is undergoing sentence since 16-10-1998 for an offence u/s 302 of the Indian Penal Code. He had applied for grant of furlough leave on 27-9-2001. Initially one Ashabai Sundarsingh Thakur was cited by the petitioner as his surety but the said Ashabai refused to stand surety. The authorities gave the prisoner another chance and the prisoner named one Prakash Natthuji Nakhore as his surety. The said Prakash Nakhore however informed the police that he did not know the petitioner, and therefore, he could not be accepted as surety. In the present petition, the petitioner has stated that his wife's sister Koushlyabai Mahadeo Gaikwad is willing to stand as surety for him. However, the return filed on behalf of the respondents indicates that when the police made enquiry with Koushlyabai, it was found that she was not having any property and that she was residing in Zopadpatti. His husband is undergoing sentence in Central Prison, Nagpur for the offence under Narcotic Drugs and Psychotropic Substances Act.

That, she had come in the contact of the petitioner when she had visited the prison. The return further reveals that Koushlyabai is not willing to stand as surety for the petitioner.

3. My attention has been drawn to a judgment of this Court delivered in Criminal Writ Petition No. 353 of 2002 by my learned brother J. A. Patil, J. on 29-10-2002 (reported in Bhimrao Nathuji Bhoyar Vs. Superintendent, Amravati Central Prison, . In the said judgment this Court has taken a view that on a co-joint reading of Rules 6 and 10 of the Prisons (Bombay Furlough and Parole) Rules, 1959, the requirement of surety can be waived by the Sanctioning Authority. The learned Single Judge of this Court has relied upon a full bench decision of the Gujarat High Court in the case of Natia Jiria Vs. State of Gujarat and Others, .

4. It is mean that the Sanctioning Authority, in such cases, in accordance with their own guidelines can only insist on surety for the amount of Rs. 100/- to Rs. 1000/-, which varies upon the class of prisoners. It is mean that even if the convict abscond, at the very highest the State would be able to recover only such small amount for which the surety is given. In the present case the learned advocate for the petitioner states that the petitioner has an amount of Rs. 2000/- lying in his credit in the account of Jail Authority. It is submitted that this amount can be kept as cash security. On perusal of form "C" under Rule 10, it would indicate that the same is meant for cash security. Since the amount is lying with the Jail Authority, in my opinion giving such bond for cash security of Rs. 2000/- will be appropriate security for release of the petitioner on furlough leave. The learned A.P.P. also concedes that this would be fair and sufficient security in the background of the practice which is being followed for grant of furlough leave.

5. In the circumstances, it is directed that the petitioner be released on furlough leave for a period of 15 (fifteen) days from the actual date of release, subject to the condition that he gives the bond for cash security of Rs. 2000/- (rupees two thousand only) being the money which is lying in deposit with the jail authority. Needless to say that the authority may impose a condition that the petitioner will furnish to the jail authority the address as to where he will be residing during his leave period and he will attend the nearest police station twice a week during the period of his leave.

6. Rule is made absolute in the aforesaid terms.