
(2016) 08 BOM CK 0147

In the Bombay High Court

Case No : Criminal Writ Petition No. 2267 of 2016

Faik Mushtaq Karambelkar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Maharashtra Prison Manual, 1979 — Rule 3

Citation : (2016) 3 AIRBomRCri 439

Hon'ble Judges : Smt. V.K. Tahilramani And Mrs. Mridula Bhatkar, JJ.

Bench : Division Bench

Advocate : Mr. Hitesh P. Shah, Advocate, for the Petitioner; Mr. H.J. Dedia, A.P.P, for the Respondent

Final Decision : Dismissed

Judgement

Smt. V.K. Tahilramani, J.— Heard both sides. Rule. By consent, rule is made returnable forthwith.

2. This petition has been preferred by the petitioner against the transfer of the petitioner from Nasik Road Central Prison, Nasik to Kolhapur Central Prison.

3. The reason for the transfer is that on 8.12.2015 and 9.12.2015 many convicts had gone on hunger strike in Nasik Road Central Prison making various demands viz.:-

"(1) That the Superintendent should recommend all the Furlough and Parole Leave of the Prisoners;

(2) That the furlough and parole leaves should not be rejected by the D.I.G. / Divisional Commissioner, not to put stringent conditions while releasing on parole or furlough, the prisoners should be released on furlough / parole on personal bonds;

(3) That punishment should not be imposed on account of overstay of parole or furlough;

(4) That FIR should not be registered under Section 224 of IPC if a prisoner absconds or does not surrender in time after being released on parole or furlough;

(5) That availability of Police Squad should be made daily for taking Prisoners to General Hospital, outside the jail;

(6) That at the time of visit of the relatives of the Prisoners, who bring along with them eatables and other articles, they should be allowed to enter directly from the Main gate of the Prison and they should not be prevented;

(7) That no action should be taken against the prisoners for heating the food items (to make Handi) in Barracks;

(8) Meals provided in jail are not of good quality".

4. Prisoners are prohibited to indulge in such type of illegal activities like strike, hence, the prisoners were informed that in view of the Rules and Regulations they should not indulge in such kind of illegal activities and they are required to maintain discipline in the jail. On 9.12.2015, D.I.G. Prison, Central Region, Aurangabad visited Nasik Road Central Prison and had a discussion with the prisoners and tried to convince them that they should not indulge in such kind of illegal activities and should not try to put pressure on the administration of the jail. On the same day, majority of the prisoners called off the hunger strike. However, it was noticed that about 25 prisoners including the petitioner, were instigating the other prisoners who were involved in the said incident, hence, a proposal was sent through the Deputy Inspector General of Prisons, Central Region Aurangabad to the Inspector General of Prisons for granting sanction to transfer these 25 prisoners including the petitioner to another prison. By order dated 17.6.2016, 25 prisoners were ordered to be transferred to various prisons in Maharashtra. The petitioner is one of these 25 prisoners.

5. Removal of prisoners to another prison is dealt with in Chapter XXXV of the Maharashtra Prison Manual 1979. Rule 3 sets out the circumstances of removal of prisoners. Rule 3 (g) in the said Chapter, reads as under:

"3. Prisoners may be removed from one prison to another prison in the State for the following reasons, that is to say:-

(a) ?

(b) ...

(c) ...

(d) ...

(e) ...

(f) ...

(g) grounds of security, expediency or overcrowding in prisons."

The petitioner and other prisoners are being transferred to another prison in view of Rule 3(g). Security is an issue which is of utmost importance in a prison. The conduct of the petitioner is such that it causes security concerns and it is also expedient to transfer such prisoners to maintain prison discipline. Even otherwise the demands of the prisoners were untenable for the below mentioned reasons.

6. As far as the demands of the prisoners is concerned, the first demand could not have been at all acceded to i.e. the Superintendent to recommend all the furlough and parole leaves of the prisoners. Recommendation would depend on the facts and circumstances of each case and the conduct of the prisoner, hence, it is not possible for the Superintendent to recommend parole and furlough leave in all cases.

7. The next demand was that furlough and parole leaves should not be rejected by the D.I.G./ Divisional Commissioner and stringent conditions should not be imposed and the prisoners should be released on furlough or parole leave on personal bonds. Grant of parole or furlough would depend on the police report, on the facts and circumstances of each case and conduct of the prisoners in the prison, hence, it is not possible for the D.I.G./Divisional Commissioner to grant all parole or furlough leaves. Imposing conditions while granting furlough / parole again depends on fact and circumstances of the case and the record of the prisoner. As far as the demand for release of prisoner on personal bond is concerned, the Supreme Court in the case of State of Maharashtra and Another v. Suresh Pandurang Darvakar reported in (2006) 4 S.C.C. 776 has disapproved the release of prisoners without surety.

8. The next demand was that punishment should not be imposed on account of overstay. As far as imposing punishment on account of overstay is concerned, discipline has to be maintained in the prisons. Cases when punishments for overstay are imposed are stated in the Maharashtra Prison Manual. A prisoner cannot flout the conditions imposed on him, or abscond or not surrender in time and then make a demand that no punishment shall be imposed on him.

9. The next demand was that no F.I.R. should be registered under Section 224 of IPC. When a prisoner is granted parole or furlough, he is told for which period he has been granted parole or furlough and the day on which he has to surrender to the jail authorities. If the prisoner does not surrender in time and he has absconded, F.I.R. is registered against the said prisoner under Section 224 of IPC. The prisoner cannot demand that law should not be allowed to take its own course.

10. The next demand was that availability of police squad should be made daily for taking prisoners to the General hospital or outside the jail. As far as this demand is concerned, the prison authorities have no control over the police authorities. It is the police authorities who provide squad/escort to take the prisoners to various places. The jail authorities can only make a requisition to the

concerned police department and the job of providing escort is totally of the police and the prison administration has no control over the same, hence, this demand on the prison authorities too is unreasonable.

11. The next demand was that at the time of visit of the relatives of the prisoners who bring along with them eatables and other articles, they should be allowed to take them directly inside the prison without being prevented or checked. As far as this aspect is concerned, visitors could bring any drugs or other articles like weapons, mobile phones etc. and give it to the prisoner, obviously, in such case, looking to the security and discipline of the prison, there has to be a check and only permitted articles can be allowed to be taken inside the prison for which checking is necessary, hence, this demand is also unreasonable.

12. One more ground was that no action to be taken against the prisoners for heating the food items in the Barracks. Rule 43 under Chapter XXIV of the Maharashtra Prison Manual 1979 which deals with cooking in kitchen only, states that no chula or fire-place for cooking shall be allowed to be constructed in any part of the prison other than the kitchen, except under special circumstances which shall be reported by the Superintendent to the Regional Deputy Inspector General. Moreover, lighting a fire in the barracks for heating food or cooking food would be hazardous for various reasons.

13. In addition to the above demands, the grievance was that the food provided in the jail is not of good quality. As far as this aspect is concerned, the food given to the prisoners is checked by Chief Medical Officer of Nashik Road Central Prison. Apart from that the said food items are checked by the Panchas who have been nominated by the Prisons for the said purpose. The Superintendent, Senior Jailor and incharge of the Kitchen also check the quality of the food meals. Further during surprise visit by the District Judge, Deputy Inspector General of Prisons, they also check the quality of food items from time to time and no such complaints of inferior quality of food items have been received from the prisoners so far. Thus it is seen that as far as quality of food provided in prison is concerned, there are sufficient checks.

14. It is seen that the group of prisoners including the petitioner had formed unlawful assembly and went on hunger strike by taking no meals on account of various demands and thereby held the prison administration to ransom. As observed earlier these demands were all highly unreasonable. It is seen that the prisoners deliberately flouted and tried to disturb the peace and discipline in the prison, hence, in view of Rule 3 of Chapter XXXV of the Maharashtra Prison Manual 1979 on grounds of security and expediency, the prisoners are liable to be transferred and accordingly, they have been transferred.

15. Security, peace and discipline in a prison are of paramount importance. They have to be maintained at all costs. Rule 13(2) of Chapter XXVI of the Maharashtra Prison Manual, 1979 deals with duties of the prisoners. Every

prisoner is required to comply with their duty stated in Chapter XXVI which includes to show respect to all officers, not strike or assault or threaten any officer or any person in prison. This is set out in Rule 13(q) of Chapter XXVI of the Maharashtra Prison Manual, 1979. The petitioner by going on hunger strike has violated Rule 13(q) of Chapter XXVI, hence, authorities were well within their right to transfer the petitioner to another prison.

16. Moreover, the petitioner is being transferred from Nasik Road Central Prison to Kolhapur Central Prison. The native place of the petitioner is Ratnagiri. Kolhapur is closer to Ratnagiri than Nasik. The distance between Kolhapur and Ratnagiri is hardly three hours whereas the distance between Ratnagiri and Nasik is about eight hours, hence, it is to the advantage of the petitioner if he is transferred to Kolhapur Central Prison.

17. In view of the above facts, we are not inclined to interfere, hence, Rule is discharged. Petition is dismissed.