
(2020) 12 GUJ CK 0005

In the Gujarat High Court

Case No : R/Special Criminal Application No. 6858 Of 2020

Faizal @ Siraj Isubhai Bloch

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 03-12-2020

Acts Referred:

Prisons (Bombay Furlough And Parole) Rules, 1989 — Rule 3
Indian Penal Code, 1860 — Section 263, 366
Protection Of Children From Sexual Offences Act, 2012 — Section 5

Citation : (2020) 12 GUJ CK 0005

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : Moxa Thakker

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

1. Heard Ms.Moxa Thakker, learned APP for the respondent â?" State through video conferencing.

2. The present application has been filed by the convict through jail for furlough leave.

3. It is contended by the applicant that he has preferred application for his first furlough leave to the authority, however, his request has been rejected

by I. G. Prison on 20.08.2020 on the three grounds namely; (i) the police has given negative opinion; (ii) the applicant has committed an offence under

Section 263, 366 of the IPC and Section 5 of the POCSO Act and (iii) it is stated by the complainant in his evidence that if the prisoner is released on

furlough, he will take up the quarrel with his family members and by keeping grudge of the present case he may attack the daughter of the

complainant;

4. Per contra, learned APP for the respondent â?" State has supported the impugned order passed by the concerned authority. She has submitted that

there is Rule 4(6) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (hereinafter referred to as 'Rules') for the forfeiture of the furlough. She

has also submitted that in view of the jail remarks, it appears that the present convict has habit of committing offences. She has also contended that

there is no illegality conducted by the authority by passing the impugned order, which is under challenge. She has prayed to dismiss the application.

5. Now it is well settled law by catena of decisions of this Court that Parole and Furlough Rules are part of the penal and prison reform with a view to

humanise the prison system. These rules enable the prisoner to obtain his release and to return to the outside world for a short prescribed period. The

object of such a release of prisoner are:

(i) to enable the inmate to maintain continuity with his family life and deal with family matters.

(ii) to save the inmate from the evil effects of continuous prison life.

(iii) to enable the inmate to maintain constructive hope and active interests in life.

6. In view of the Prisons Act read with Rules, it appears that the Parole and Furlough system has been incorporated with specific object as referred to

hereinabove. However, the Parole is not an absolute right of the prisoner. Under the provisions of the Act and the Rules, it can be granted or refused

or withdrawn as per rules. At the same time, for furlough leave, there is no need of any ground. But, at the same time for granting Parole Leave, there

must be some reason.

7. It is pertinent to note that Rule 3 of The Prisons (Bombay Furlough and Parole) Rules, 1989 provides for the provisions as to when prisoner may be

granted furlough. The said Rule 3 reads thus:

â??3. When Prisoner may be granted furlough.

(1) A Prisoner, who is sentenced to imprisonment for a period exceeding one year but not exceeding five years, may be released on furlough for a

period of two weeks at a time for every year of actual imprisonment undergone.

(2) A Prisoner, who is sentenced to imprisonment for a period exceeding five

years may be released on furlough for a period of two weeks at a time for every two years of actual imprisonment undergone:

Provided that a prisoner sentenced to imprisonment for more than five years but not to imprisonment for life may be released on furlough every year

instead of every two years during the last five years of his unexpired period of sentence:

Provided further that a prisoner sentenced to life imprisonment may be released on furlough every year instead of every two years after he completes seven years actual imprisonment.â??

Note 1: The period of imprisonment in this rule includes the sentence or sentences awarded in lieu of fine in case the amount of fine is not paid.

Provided that if fine is paid during the period of imprisonment and the total sentence thereby reduced to a term not exceeding 5 years he shall

thereafter be eligible for release every year in accordance with subrule (1) instead of every two years under subrule (2).

Note 2. For the purposes of this rule, the period of imprisonment shall be computed as the total period for which a prisoner is sentenced even though one or more sentences be concurrent.

Note 3. If at any time a prisoner who could have been granted furlough is either not granted or is refused the same the period for which he could have been granted the furlough shall not be carried forward but shall lapse.

Note 4. The period of two weeks may be initially extended up to three weeks in the case of prisoners desiring to spend the furlough outside the State of Bombay.

Note 5. An order sanctioning the release of a prisoner on furlough shall cease to be valid if not given effect to within a period of two months of the date thereof.

8. On the analysis of the aforesaid provisions of Rule 3, it is clearly found from the Note 3 thereof makes provisions that if at any time a prisoner who could have been granted furlough is either not granted or is refused, the same the period for which he could have been granted the furlough shall not be carried forward but shall lapse. Now in the present case, this is not the ground of rejection of the application of Furlough. The jail authority has simply rejected his prayer on the three grounds which has been reproduced

hereinabove. Now, in view of the decision of the full bench referred to hereinabove and the facts that the prisoner has already been undergone the sentence by the concerned Court for the Jail offences, the Authority ought to have taken into consideration the other facts available on record.

9. In view of the aforesaid observation, the impugned order passed by the competent authority is required to be quashed and set aside and the authority needs to reconsider the request of the applicant for granting him Furlough Leave.

10. For the reasons above, the application succeeds. Rule is made absolute by quashing and setting aside the refusal of furlough due to the applicant

prisoner by directing the respondent authority to consider the grant of furlough/ furloughs due to the applicant in accordance with law within a period of one month from today.