
(2013) 05 BOM CK 0060

In the Bombay High Court

Case No : Criminal Writ Petition No. 46 of 2013

Francis D'Sa

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 302

Citation : (2013) 4 ABR 352 : (2013) ALLMR(Cri) 2900

Hon'ble Judges : R.P. Sondurbaldota, J

Bench : Single Bench

Advocate : Prema Matkar, for the Appellant; Amonkar, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R.P. Sondurbaldota, J.—Rule. Rule made returnable forthwith. Petition is taken up for final hearing by consent of the parties.

2. The petitioner herein is serving sentence for offence punishable u/s 302 of Indian Penal Code. He had made an application for furlough on 11th March, 2013. That application came to be rejected by respondent No. 2 by its order dated 19th April, 2013. Therefore, the petitioner has approached this Court.

3. Ms. P. Matkar, learned counsel for the petitioner submits that the two reasons given in the impugned order for rejecting the application for furlough are not substantiated by any material. One of the reasons stated in the order is that the possibility of the petitioner creating problems to the family members of the victim/witnesses who had deposed in this case. The second reason is that the Superintendent of Jail reports that the conduct of the petitioner in jail is not satisfactory.

4. As regard the first reason of apprehension of harassment to the witnesses or family members of the victim not only there is no material produced in the reply filed to the petition but the record shows that the petitioner has been twice

released on furlough and parole in the year 2012. He was released on furlough on 3rd January, 2012 till 30th January, 2012 and on parole on 20th June, 2012 till 8th August, 2012. The second ground about conduct in jail is sought to be supported by order dated 16th January 2013 passed by Superintendent of Central Jail, Aguada, Goa by which the petitioner was given punishment of "formal warning" along with other convict prisoners of cell No. 13 in jail as per Rule 358(a)(1) of Goa Prisons Rules, 2006 for possessing/hiding prohibited articles in the cell. During the surprise check on 15th January, 2013 the jail authorities had found two bidi packets and two earphones in the cell No. 13. The jail authorities however could not find out which prisoner from cell No. 13 had brought the prohibited articles in the cell. Consequently all inmates of that cell were issued formal warning not to possess or hide any prohibited articles in the cell. Mere discovery of prohibited articles which were not serious by themselves in the cell occupied by several prisoners, was not sufficient to deny furlough to the petitioner. The objectives of release on furlough as noted in Rule 311 of the Goa Prison Rules, 2006 is to enable the prisoner to maintain continuity with his family life, to save him from the evil effects of continuous prison life, to enable him to maintain and develop his self confidence and to enable him to develop constructive hope and active interest in life. Such objectives cannot be hindered on grounds that are not sufficiently grave. Hence, the petition is allowed. The petitioner shall execute personal bond in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of the Superintendent of the Jail.

5. Rule is made absolute in terms of prayer clause (a). Parties to act on the duly authenticated copy of the judgment.