

(2003) 11 BOM CK 0016

In the Bombay High Court

Case No : Criminal Writ Petition No. 312 of 2003

Gajanan Eknath Marathe

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 17-11-2003

Acts Referred:

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 4
Prisons Act, 1894 — Section 59

Citation : (2004) CriLJ 987

Hon'ble Judges : P.S. Brahme, J; D.D. Sinha, J

Bench : Division Bench

Advocate : S.A. Jaiswal, for the Appellant; S.G. Loney, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

1. Rule returnable forthwith.
2. Heard Mr. Jaiswal, learned Advocate for the petitioner and Mr. Loney, learned A. P. P. for State.
3. The writ petition is directed against the order dated 6-5-2003 passed by the competent authority whereby the request of furlough leave made by the petitioner was rejected in view of Sub-rule (4) Rule 4 of Prison (Bombay Furlough and Parole) Rules 1959. Learned counsel for the petitioner states that there is nothing to show that the release of the prisoner on furlough leave could result in breach of public peace and tranquillity. It is contended that the adverse police report dated 1-4-2003 was submitted, in view of the functions of the Dr. Ambedkar Jayanti as well as Mahavir Jayanti which were scheduled to take place at the relevant time and therefore the opinion was expressed by the police that there was likelihood of breach of peace and tranquillity. However, that situation no more exist and therefore, that cannot be a ground now to reject the request of the petitioner for furlough leave.

4. Mr. Jaiswal, learned counsel states that in the impugned order itself it is specifically mentioned that application for furlough is rejected in view of the provisions of Sub-rule (4) of Rule 4 of the Prison Rules 1959 and therefore, at this stage it is not open for the State to canvass the other grounds mentioned in Sub-rule (4) of Rule 4 of Prison Rules, 1959. It is therefore, contended that the impugned order is bad in law.

5. Mr. Loney, learned A. P. P. contended that the application for furlough leave of the petitioner, though rejected on the ground of adverse police report and in view of the provisions of Sub-rule (4) of Rule 4 of Prison Rules, 1959, however, in addition to that there is ample material to show that the petitioner was involved in number of criminal proceedings and is a habitual criminal. It is contended that since 1990 onwards till 2000 the petitioner was involved in as many as 13 criminal cases under various provisions of Indian Penal Code including murder cases which are shown and described in the Annexure-A annexed with the affidavit. Mr. Loney, further states that the petitioner was convicted earlier in as many as four offences under Sections 457, 380 of the I. P. C, It is contended that the petitioner who has a definite tendency towards crime and therefore as per Sub-clause (5) of Rule 5 of Prison Rules 1959, request for grant of furlough leave can be rejected if in the opinion of the Superintendent of Police -- Prisons, the prisoner shows tendency towards crime. Learned A. P. P. contended that even on this count the petitioner is not entitled to get furlough leave.

6. We have considered the contention canvassed by the respective counsel and perused the impugned order passed. The impugned order discloses that the power which is exercised by the competent authority rejecting the application for grant or furlough is in view of provisions of Sub-rule (4) of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules 1959. Sub-rule (4) contemplates that the request of furlough leave of the prisoner can be rejected whose release is not recommended in Greater Bombay by Commissioner of Police and elsewhere by District Magistrate on the ground of public peace and tranquillity. In the instant case release of the applicant was not recommended in view of adverse police report dated 1-4-03 by the District Magistrate vide his communication dated 19-4-2003 on the ground that such release would affect public peace and tranquillity in view of Ambedkar Jayanti and Mahavir Jayanti which were scheduled to take place at the relevant time. However, in the instant case there are more glaring factors which in our view are ignored by the competent authority while considering the grant of request of the petitioner for furlough leave. The petitioner appears to be involved in innumerable criminal offences in earlier point of time and was also convicted in many such criminal cases. However, in the impugned order there is nothing to show that the competent authority considered this aspect in view of Clause 5 of Rule 4 of Prison Rules 1959, in order to come to the conclusion that the applicant is a man of criminal tendency and in the absence thereof we are afraid that the order cannot be sustained. It is well settled that the grounds, on which the request for grant of furlough leave of the prisoner is rejected must find place in the order of rejection

and such grounds cannot be supplemented by the State at the later point of time in order to justify the validity of the said order.

7. In the instant case we are unable to notice in the impugned order that the application of the petitioner for grant of furlough leave is rejected in view of the provisions of Clause 5 of Rule 4 in addition to the contingency mentioned in Clause (4) of Rule 4 of Prison Rules 1959 and in absence thereof the impugned order cannot be sustained. However, in the larger interest of the society, we are of the view that the matter needs to be remanded back to the competent authority who should reconsider the whole issue after taking into consideration all the aspects of the matter and should pass appropriate order according to law, keeping in view the observations made by this Court in the present order.

8. The impugned order dated 6-5-2003 passed by the competent authority is quashed and set aside. The matter is remitted to the competent authority to reconsider the case of the petitioner for furlough leave afresh in view of the above observations made by us in the order and decide the same within a period of three weeks from the date of receipt of this order according to law.

9. Petition is allowed in above terms. The competent authority is expected to communicate its order to the petitioner.