

(2014) 01 GUJ CK 0035
In the Gujarat High Court

Case No : Special Criminal Application No. 3749 of 2013

Govabhai Nagjibhai Rabari

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 31-01-2014

Acts Referred:

Constitution of India, 1950 — Article 14 21 226
Criminal Procedure Code, 1973 (CrPC) — Section 268 389(1)
Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 01 GUJ CK 0035

Hon'ble Judges : S.H. Vora, J

Bench : Single Bench

Advocate : Shilpa R. Shah, for the Appellant; Niraj Soni, APP, for the Respondent

Final Decision : Dismissed

Judgement

S.H. Vora, J.—By means of present petition under Articles 14, 21 and 226 of the Constitution of India and under the provisions of Furlough and Parole Rules, 1959, the petitioner, who is undergoing life imprisonment for the offence punishable u/s 302 of the Indian Penal Code imposed in Sessions Case No. 72 of 2001 and Sessions Case No. 78 of 2006, wherein Appeals at the instance of the petitioner, are pending, has prayed this Court to issue writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction, releasing the petitioner on personal bond immediately as per the provisions of Furlough Rules. It is submitted by learned advocate Ms. Shah for the petitioner that the petitioner submitted furlough leave application on 29.10.2012, but it was rejected by the IG (Prisons) on the ground that there is restriction order imposed upon the petitioner u/s 268 of the Code of Criminal Procedure. Therefore, the petitioner approached this Court by filing Special Criminal Application No. 2009 of 2013, seeking direction to release him on furlough leave. Vide order dated 3.7.2013, this Court directed the petitioner to apply fresh as per the observations recorded by the IG (Prisons) in the said order, which was subject matter of said Special Criminal Application. It is submitted by learned

advocate that on 10.7.2013, the petitioner applied afresh for furlough, but it was not decided despite lapse of three months period. The petitioner approached this Court by way of filing Special Criminal Application No. 3116 of 2013. Vide order dated 15.10.2013, the Court directed to decide the petitioner's application dated 10.7.2013 within three weeks from the date of receipt of writ of this order.

2. Vide order dated 3.11.2013, the IG (Prison), Gujarat State, rejected the petitioner's application on the ground that the petitioner is undergoing life imprisonment and if the petitioner is released on furlough, he is likely to abscond and considering the previous incidents, the petitioner is accused in serious crimes and he is in habit of committing offence by forming gang and thus, on such broad grounds/reasons, the petitioner's furlough leave was not recommended and accordingly, on the basis of opinion of two Deputy Commissioner of Police, the petitioner's four furlough leave application came to be rejected. It is submitted by the petitioner that the petitioner has preferred two Criminal Appeals against two life imprisonment convictions recorded against the petitioner. According to the petitioner, in Criminal Appeal No. 2156 of 2005, the petitioner is granted bail whereas Criminal Appeal No. 1549 of 2012 has been admitted, but the petitioner has not preferred any bail application in the said Appeal. According to the learned advocate for the petitioner, as per Rule 3 of the Furlough/Parole, the petitioner is entitled to release on furlough as the petitioner has been prisoned since March, 2000. At the end, learned advocate Ms. Shah appearing for the petitioner submits to issue appropriate direction to the Jail Authority to release the petitioner on furlough leave.

3. Learned APP Mr. Niraj Soni for the respondent - State, took this Court through the Rules of Bombay Furlough and Parole Rules, 1959. According to him, the competent Authority refused the furlough leave on the basis of opinion of two Deputy Commissioner of Police, which is based on the authenticated information and other materials on record and therefore, the order of the competent Authority rejecting the petitioner's furlough leave application is legal and proper, which does not call for any interference. In support of his submissions, learned APP Mr. Soni has drawn my attention to the decision rendered in case of *Motisingh Kesirishinh Vs. State of Gujarat* reported in 1994 (2) GLR 1145 and more particularly, para 5, which reads as under:

The discretion of the High Court by virtue of extraordinary powers under Art. 226 of the Constitution of India cannot be lightly exercised in matters where the authorities have quite justly and properly exercised its discretion. How to manage and regulate the Jail administration is essentially and entirely a concern and look out of the Jail authorities and as long as the orders passed by them are just, fair and proper, this Court has no right or business to meddle with the same and thereby in the internal affairs of the Prison administration.

4. The relevant Rule 4(4) (5) (6) and (10) of the Bombay Furlough/Parole Rule, 1959, read as under:

4. When prisoners shall not be granted furlough.-The following categories of prisoners shall not be considered for release on furlough:-

(1) xxx xxxx xxxx

(2) xxx xxx xxxx

(3) xxx xxx xxxx

(4) Prisoners whose release is not recommended in Greater Bombay by the Commissioner of Police and elsewhere, by the District Magistrate on the ground of public peace and tranquility.

(5) Prisoners, who, in the opinion of the Superintendent of the prison show a tendency towards crime.

(6) Prisoners whose conduct is in the opinion of the Superintendent of the Prison, not satisfactory enough.

(7) xxx xxx xxx xxx

(8) xxx xxx xxx xxx

(9) xxx xxx xxx xxx

(10) Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole on furlough.

5. It is pertinent to note that the petitioner is convicted in two murder cases and he is in jail since March, 2000. It appears that the petitioner was released on bail on 2.5.2009 pending hearing of the Criminal Appeal No. 2156 of 2006. Upon dismissal of the said Appeal, on 11.7.2013, the petitioner was made subject to undergo imprisonment as confirmed in the said Appeal. From the jail remarks, it appears that the petitioner has never been granted any furlough leave and in the year 2012, he was granted two parole leave but that too under Police Japta. Keeping in mind this fact, it is also required to be noted here that while granting furlough, the competent Authority is required to consider gravity and seriousness of offence for which the petitioner has been convicted. Undisputedly, the petitioner has been awarded life imprisonment in two different cases.

6. The IG (Prisons), Shri K.K. Gamit has filed affidavit-in-reply in this matter and after considering the record of the present petitioner, he formed an opinion on the basis of recommendations of two Deputy Commissioner of Police that the petitioner is habitual offender and harden criminal and every likelihood of his absconding and also engage himself in antisocial activities in view of his past record. In this connection, it is relevant to take note of the observation made in the case of Bhikhabhai Devshi Vs. State of Gujarat and Others, wherein in para 35, it is held as under:

35. In view of the aforesaid discussion, it is clear that in the context of latter part

of Rule 4(1), the word "shall" will have to be read as "may" and directory. The prison authorities cannot reject as ineligible the request of due furlough of the prisoners who have surrendered late in past. The authorities have the power and duty to consider grant or refusal of such furlough due to the prisoners, having regard to the facts and circumstances of the case including the fact that the prisoner had surrendered late in past. That would be one of the relevant factors to be taken into account. Another relevant factor to be taken into account will be the view taken regarding the gravity of the offence while imposing punishment under sec. 48A of the Act read with Rule 1287 of the Jail Manual.

7. In view of the fact emerging on record and ratio laid down in the cases referred hereinabove, it is true that the furlough leave is granted to the convict so as to enable him to have family association and further to avoid evil effect of continuous prison life. But in view of above, it is clear that the person, who seeks to be released on furlough leave, cannot be released, if not recommended by the competent Authority on the ground of public peace and tranquility. In the present case, both the Deputy Commissioner of Police gave adverse opinion, taking into consideration the petitioner's past record and history, order passed by the Jail Authority is legal and proper and does not call for any interference. In this connection, reference may be made to the Full Bench decision rendered by this High Court in the case of *Latif Chhmtumiya Shaikh Vs. State of Gujarat*, wherein it has been held in paras 32 and 33 as under:

32. Thus, powers under the provisions contained in the Bombay (Furlough and Parole) Rules, 1959 cannot be exercised by the executive in favour of a convict undergoing sentence whose appeal is pending before the Court. The Division Bench in the case examined the scheme of the Bombay(Furlough and Parole) Rules, 1959 and Sec. 389(1) of Criminal Procedure Code. The Division Bench following the decision of the Apex Court in case of *K.M. Nanavati (supra)* and agree with the views of Division Bench of Bombay High Court in case of *Jayanti Veerappa Shetty v. State of Maharashtra (1985 Cr. LR (Maharashtra)598)* held that the power of grant of parole cannot be exercised by the administration where the appeals of convicts concerned are pending and such persons can be released on bail only by the Appellate Court under:

Sec. 389(1) of the Code of Criminal Procedure "and not by the administration".

33. In our opinion, a convict undergoing sentence imposed by the competent authority cannot be released on parole or furlough by High Court when an appeal arising out of the said judgment of conviction and sentence is pending.

So, considering the ratio laid down in the said case and scheme of Furlough/ Parole Leave and peculiar facts of the present case, this petition deserves to be rejected. Accordingly, it is rejected. Rule is discharged.