

(2011) 10 BOM CK 0135

In the Bombay High Court

Case No : Criminal Writ Petition No. 773 of 2011

Johny @ Abdul Rahim Khalil Shaikh C-4295, Open Prison,
Paithan, District Aurangabad

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 04-10-2011

Acts Referred:

Citation : (2012) BomCR(Cri) 199

Hon'ble Judges : A.R. Joshi, J;A.H. Joshi, J

Bench : Division Bench

Advocate : N.R. Shaikh, APP, for the Respondent

Judgement

A.H. Joshi, J.—Heard.

2. Rule. Rule made returnable forthwith.

3. The Petitioner is a life convict. He had applied for parole.

4. The Divisional Commissioner had rejected his request, by order dated 21.6.2011. The grounds for rejection, as incorporated in the order, can be summarised as follows:

(1) Two daughters and son-in-laws of the petitioner's mother are competent to look after and attend to the Petitioner's mother and her ailment.

(2) Petitioner's surety is not willing to furnish surety bond and in absence of surety, the Petitioner is not eligible for release.

5. In the background that the police report was adverse stating that the surety is not willing to stand surety, the prisoner had forwarded with this letter petition, the affidavit sworn by the surety, namely, Gulab Bahadur Khan.

6. After reading the letter petition and surety's affidavit annexed to the letter petition, we were curious to know whether the Petitioner/life convict was any time released in past.

7. In response to the query made by this Court, learned APP had furnished the information received from the Superintendent of Open Prison, Paithan.

8. The information furnished to us consists of following data:

Leave Record of the Prisoner (Petitioner)

Sr. No.

Leave

Date of Release

Date of Reporting

Jail punishments

Remarks

1

Furlough

3.6.2005

18.6.2005

Nil

Reported on scheduled date.

2

Furlough

20.1.2008

21.2.2008

Nil

Reported on scheduled date.

3

Furlough

2.12.2008

31.12.2008

Nil

Reported on scheduled date.

4

Furlough

16.10.2009

6.11.2009

Nil

Reported on scheduled date.

5

Parole

21.12.2009

22.3.2010

Nil

Reported on scheduled date.

6

Parole

20.10.2010

18.11.2010

Nil

Reported on scheduled date.

9. As we could see, present Petitioner's case seems to be one amongst the few or many prisoners who have no prison punishment and who has reported to Prison in time, on all occasions in past, after availing the parole and/or furlough.

10. We have seen from the information furnished to us by the Superintendent of Jail that on earlier occasions, the Petitioner was released and now it is not reported to us or shown to have been known to jail authority or Police, that and adverse report about behaviour of Petitioner during earlier period of parole or furlough.

11. In this background, we see no reason why should surety decline to execute a bond.

12. The question mark as regards truthfulness, honesty as well as sincerity and integrity of the police personnel, who has forwarded adverse police report, has come under glare and it has become vivid that all these virtues are absent in said police personnel's working.

13. Now, let us see how this false and dishonest or atleast erroneous report of a Police personnel works in the field, after said dirty vires starts operating.

The system wants that such report is to be acted upon unmediated and as an ultimate truth. His higher ranks, including Superintendent of Police or his

equivalent or the delegate and even in turn the District Magistrate, endorse it with all solemnity.

14. In case of parole the Senior Revenue Officer of the rank of Divisional Commissioner and in case of furlough a Senior Police/Jail Officer of the rank of D.I.G. Prisons, thus forfeits his powers, discretion and jurisdiction and subrogates and succumbs to a dishonest, indolent and/or apathetic and inhuman shallow constable's subjective view.

15. While sitting on the Division Bench on Criminal Jurisdiction, at least one petition appears on board, in each week, when such situation surfaces. Adverse reports which are adverse due to refusal or failure of relatives to pay the gratification or false due to indolence or negligence or due to fear of responsibility or accountability is a very common scene.

16. This scene and recurrence can be moderated but one does not know whether can come to an end.

17. We have considered this aspect and we find that there is a systemic fault in the manner of scrutiny of the applications of Prisoners.

18. The Divisional Commissioner and/or D.I.G. Prisons, as the case be, should adopt a methodology of having a file "Previous correspondence and the Docket of the case of every prisoner" if not already in practice. Such Docket shall consist of entire previous record of the releases of the Petitioner and such docket shall be maintained as a permanent record until he is released and or for a reasonable duration till final release.

19. Whenever Superintendent, Jail sends for report, the requisition must contain all previous data such as:

- (a) Date since in custody.
- (b) Date since in particular jail.
- (c) Date and case in which convicted.
- (d) Details of conviction.
- (e) Earlier applications for parole furlough and the summary of Police Report, on each occasion viz:
 - (i) Date when applied:
 - (ii) Category Parole/Furlough:
 - (iii) Nature of Police Report, and if adverse, facts or grounds:
 - (iv) Whether released and date:
 - (v) Date of report including in time or late and days of delay:
 - (vi) Jail Punishment:

(vii) Other remarks.

20. Though we have suggested items to be included in the format, the jail and Revenue authorities may devise a format of their own choice so that it serves as a better equipment for quick and fair decision making process.

We hope that use of modern devices and calling the report on Email should, in addition to present practice, be adopted.

21. Such detailed information is forwarded when the requisition for report is send, the reporting officer's decision would get some moulding, and reduce and/or dispense with whimsical or capricious part thereof, as well as the subjective element therein.

22. The recurrence of letter petition and recurrence of erroneous police report would automatically get controlled. We are confident that had the Divisional Commissioner with him and in docket, prisoner/petitioner's earlier entire leave record, including the details of guarantor/surety, he would not have declined the application of the present nature.

23. Rejection due to a fraudulent report portrays that the powers of the Divisional Commissioner are either usurped, frustrated or are controlled by a grass root level official like a "Constable" or "Head Constable" and this situation also turns out to portray a ludicrous picture. This tarnishes the rule of hierarchy and prestige of these officers which we do not want to happen and recur. We are keen that prestige of executive needs to be maintained and for that aim, we want them to be more methodic.

24. While we are inclined to allow the petition, we could not have refrained from writing about general methodology which needs to be adopted by the Prison authorities. We hope that the modern gadgets and devices of communication would come to help, since such docket would be maintained in online format and would be accessed for perusal, simultaneously, by the revenue and jail authorities. We, therefore, pass following order.

ORDER

25. (1) Rule is made absolute as follows:

(a) The order passed by the Divisional Commissioner, Aurangabad refusing the parole dated 21.6.2011 is set aside and the petitioner is granted parole for the period of two weeks.

(b) The conditions as to bond etc. be specified by the Divisional Commissioner, Aurangabad within three days of the receipt of the order from this Court and the petitioner be released in accordance with law.

(2) In so far as the general practice to be followed is concerned, we direct that:

(a) The Inspector General of Prisons, State of Maharashtra, Pune shall arrange for a meeting and work out some modalities, as to these forms and dockets.

(b) We shall highly appreciate if the Inspector General of Prison, takes an interest in the matter and improve further what we have indicated and to see that it is made applicable all over the State since the problems of all the prisoners in the State and their rights are by and large the same.

(c) The devising formats and calling report on providing entire previous record, be commenced as far as possible within six weeks from today.

(3) We direct the learned APP to communicate this order to the concerned authorities for appropriate action.

(4) Steno copy is allowed.