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**(1972) 04 GUJ CK 0010**  
**In the Gujarat High Court**

Juvansingh Lakhubhai Jadeja

APPELLANT

Vs

State of Gujarat

RESPONDENT

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**Date of Decision :** 17-04-1972

**Acts Referred:**

Constitution of India, 1950 — Article 14, 14, 226, 226

Penal Code, 1860 (IPC) — Section 302, 394

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 4(2)

**Citation :** (1973) 14 GLR 104

**Hon'ble Judges :** M.P. Thakkar, J;C.V. Rane, J

**Bench :** Division Bench

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## Judgement

M.P. Thakkar, J.—This petition under Article 226 of the Constitution by a convict who is undergoing a sentence of imprisonment for life imposed on him by a competent court for an offence u/s 302 of the Indian Penal Code as also simultaneously therewith undergoing a sentence of rigorous imprisonment for seven years imposed on him by another Sessions Court for offences u/s 394 and 397 of the Indian Penal Code has given rise to a challenge to the vires of Rule 4(2) of the Prisons (Bombay Furlough and Parole) Rules, 1959, hereinafter referred to as the "Parole Rules", framed in exercise of powers conferred by the relevant provisions of the Prisons Act, 1894, on the ground that the said rule is discriminatory in character and is violative of the fundamental rights guaranteed by Article 14 of the Constitution of India.

2. The petitioner who is undergoing simultaneously in the Ahmedabad Central Prison the sentence of life imprisonment imposed on September 30, 1969 by the Sessions Judge, Jamnagar, in Sessions Case No. 25 of 1969 for an offence u/s 302 of the Indian Penal Code as also a sentence of seven years" rigorous imprisonment imposed on May 22, 1970 by the Sessions Judge, Surendranagar, for an offence under Sections 394 and 397 of the Indian Penal Code in Sessions Case No. 31 of 1969 applied for furlough leave under the Parole Rules to the Inspector (General of Prisons. It appears that his request for such leave was refused by the Inspector General of Prisons on the ground that he having been

convicted u/s 394 & 397 of the Indian Penal Code, he was not entitled to claim furlough leave as per Rule 4(2) of the Parole Rules. Thereupon the petitioner addressed a petition to the High Court. It was registered as Miscellaneous Criminal Application No. 458 of 1971. It was prayed that the Inspector General of Prisons should be directed to grant his request for furlough leave. This petition was treated as one invoking the jurisdiction of this Court under Article 226 of the Constitution of India and rule was issued by S. H. Sheth J. on December 8, 1971 which was made returnable on December 13, 1971. On December 13, 1971 S.H. Sheth J. passed an order directing that the matter should be placed before a Division Bench. That is how this petition has come up for hearing before this Court.

3. The petitioner has called into question the legality and validity of the order passed by the Inspector General of Prisons refusing furlough leave to him on a somewhat ingenious ground. It will be recalled that he is simultaneously (or concurrently) undergoing the sentence of imprisonment for life imposed on him u/s 302 of the Indian Penal Code as also a sentence of seven years' rigorous imprisonment imposed on him under Sections 394 and 397 of the Indian Penal Code. Now, Rule 4(2) of the Parole Rules enjoins that prisoners convicted of offences under Sections 392 to 402 both inclusive of the Indian Penal Code shall not be considered for release on furlough. There is, however, no such provision precluding a prisoner's request for release on furlough being considered in case of convicts undergoing sentence for an offence u/s 302 of the Indian Penal Code. The petitioner has therefore raised the contention that inasmuch as he was first convicted and sentenced for an offence u/s 302 of the Indian Penal Code, in the eye of law he must be treated as undergoing that sentence first. That being the position, (such is the argument) Rule 4(2) of the Parole Rules is not attracted at all. The mere fact that he is also concurrently undergoing a sentence imposed under Sections 394 and 397, it is urged, will not disentitle him from claiming the right to the grant of furlough leave which is available to him in his capacity as a prisoner undergoing a sentence u/s 302 of the Indian Penal Code. That is the main ground on which the petition is founded. However, at the hearing of this petition, Mr. C. T. Daru who was good enough to accept the assignment as *amicus curiae* and has appeared in support of the petition, has raised the additional question regarding the constitutionality of Rule 4(2) of the Parole Rules. Both these questions, therefore, have come up for being resolved before us.

4. So far as the first point is concerned, there is no substance in it. Merely because the petitioner was convicted for an offence u/s 302 about a year before he was convicted and sentenced for an offence under Sections 394 and 397 of the Indian Penal Code, it cannot be said that he is not undergoing a sentence under the latter provision when he is undergoing the sentences concurrently. It is not as if in undergoing a concurrent sentence, he is undergoing a sentence separately for an offence u/s 302 of the Indian Penal Code divorced from the conviction and sentence imposed on him under Sections 394 and 397 of the

Indian Penal Code. A concurrent sentence carries the inbuilt conception of the prisoner undergoing the sentences in connection with the two different punishments imposed in two different cases simultaneously or concurrently at the same time. The law has resorted to a fiction and has treated the sentence being undergone by the prisoner as being undergone for both the offences simultaneously or concurrently. This is for the benefit of the prisoner because otherwise he would have to undergo the two sentences consecutively. Merely because the sentence for the offence u/s 302 was imposed earlier in point of time, it cannot be said that what is being undergone at present is the sentence imposed under that section and not the sentence imposed on him one year later in December 1969. By virtue of the fiction, in the eye of law, he is deemed to be undergoing the sentence imposed by the Sessions Court of Jamnagar for offence u/s 302 as also the sentence imposed on him by Sessions Court of Surendranagar for an offence under Sections 394 and 397 of the Indian Penal Code simultaneously and concurrently. There is a fusion of both the sentences and no dichotomy is possible. As the petitioner will not have to undergo the sentence imposed for the offences under Sections 394 and 397 after the completion of his sentence for the offence u/s 302, it is obvious that the argument that he is undergoing the sentence imposed earlier in point of time is specious and devoid of substance. The first contention under the circumstances cannot succeed.

5. It was, however, argued by Mr. C. T. Daru, as amicus curiae appearing for the petitioner, that Rule 4(2) which disentitles a prisoner convicted of offences under Sections 392 to 402 (both inclusive) to claim furlough leave is discriminatory and violative of Article 14 of the Constitution of India which guarantees the fundamental right of equality. We will, therefore, proceed to examine the validity of the challenge from this standpoint.

6. Rule 4 of the Parole Rules may be quoted in order to understand the scheme of the rule and the point of argument. It runs thus:

4. When prisoners shall not be granted furlough:

The following categories of prisoners shall not be considered for release on furlough:

(1) Habitual prisoners.

(2) Prisoners convicted of offences under Sections 392 to 402 (both inclusive) of the Indian Penal Code.

(3) Prisoners convicted of offences under the Bombay Prohibition Act, 1949.

(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) Prisoners confined in the Ratnagiri Special Prison.

(8) Prisoners convicted of offences of violence against person or property committed for political motives, unless the prior consent of the State Government to such release is obtained.

(9) A prisoner or class of prisoners in whose case the State Government has directed that the prisoner shall not be released or that the case should be referred to it for orders.

(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 or furlough.

7. It is argued that the selection of Sections 392 to 402 for being included in the list of offences in respect of which furlough leave shall not be granted is arbitrary and that it is not based on any rational principle. If prisoners convicted for more serious offences such as murder are not precluded from claiming furlough leave, why should prisoners convicted of offences under Sections 392 to 402 be denied the right to claim furlough leave ? It is urged that the classification made by the rule making authority is not rooted in any rational principle and, therefore, Rule 4(2) must be struck down.

8. We are unable to accede to the argument addressed to us by Mr. Daru on behalf of the petitioner for reasons which will become presently evident. It is necessary to realise that it is as a measure of penal reform that the parole Rules are framed which enable a convict to obtain his release from his incarceration and to return to the outside world for the prescribed period. The objects of releasing the convicts can be gleaned from paragraph 101 of the report submitted by the All India Jail Manual Committee as also the objects mentioned in the Model Prison Manual. These objects 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 and develop his self confidence; and

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

But in introducing penal reforms, the State that runs the administration on behalf of the society and for the benefit of the society at large cannot be unmindful of safeguarding the legitimate rights of the citizens in regard to their security in the matters of life and liberty. It is for this reason that in introducing such reforms

the authorities cannot be oblivious of the obligation to the society to render it immune from those who are prone to criminal tendencies and have proved their susceptibility to indulge in criminal activities by being found guilty (by a Court) of having perpetrated a criminal act. One of the discernible purposes of imposing the penalty of imprisonment is to render the society immune from the criminal for a specified period. It is, therefore, understandable that while meting out humane treatment to the convicts care is taken to ensure that kindness to the convicts does not result in cruelty to the society. Naturally enough the authorities would be anxious to ensure that the convict who is released on furlough does not seize the opportunity to commit another crime when he is at large for the time-being under the furlough leave granted to him by way of a measure of penal reform. This appears to be the object underlying Rule 4 which enjoins that prisoners of the specified categories shall not be enlarged on furlough. And that is why Rule 4(1) provides that "habitual prisoners" should not be considered for furlough leave. If committing the offence has become a habit, a prisoner is less likely to respond to the corrective treatment aimed at his reform while he is undergoing the sentence to the extent that he can safely (safely for the society) be set at large before the expiration of his term of imprisonment. If released, he is more prone to the temptation to commit a crime because in his case the crime is committed not merely under compulsion of circumstances or in a moment of passion but on account of his having become habituated to that way of life. Until there is evidence that he has been able to break the chains of habit and master his habitual impulses, it would not be safe from the point of view of the society to throw him in the midst of it thereby exposing the society to further crimes by him. The same idea appears to run through most of the clauses of Rule 4. For instance, Rule 4(3) concerns persons convicted of offences under the Bombay Prohibition Act, 1949. Apparently persons who indulge in offences under the Prohibition Act either by consuming liquor or by trading in liquor become slaves of the habit or way of life and find it difficult to free themselves from the bondage of habit. That appears to be the reason why it is provided that they should not be considered for release on furlough because a break from the prison life will expose them to the same temptation and the purpose of keeping them away from the habit for sufficient time to enable them loosen the hold of the habit would not be served. Similarly Clause (5) of Rule 4 provides that those who show a tendency towards crime should not be so released. The idea would appear to be that in view of their manifest tendency it would not be advisable to expose them to the temptation and expose the society to the risk. The same purpose is evident in Clause (6) which provides that those whose conduct is not considered to be satisfactory enough should not be considered for release. And Clause (10) also appears to have the same object, in providing that persons who have in the past escaped or attempted to escape from lawful custody or who have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough should not be considered for being released under the Parole Rules. It is in the light of this purposeful approach to the question regarding excluding certain categories of prisoners from being

considered for release that we have to examine the argument questioning the vires of Clause (2) of Rule 4 on the ground of being arbitrary and discriminatory.

9. Sections 392 to 402 occur in Chapter XVII of the Indian Penal Code and relate to offences of robbery and dacoity. The question is : is there any rational basis for selecting this class of offences for being included in the list of the offences for which convicts should not be enlarged on furlough ? Now, in robbery an element of violence is present along with theft or extortion. Violence is either actually used or attempted to be used either for carrying away of the property or for making the victim part with the property. And when five or more persons conjointly commit or attempt to commit robbery, the offence falls within the description of dacoity. It is obvious that in dacoity five or more persons come together with the avowed object of obtaining property unlawfully by resort to violent means. When so many persons enter upon a life of crime and form a group which is likely to become an organized gang, it is clear that there is great danger in letting them loose. In order to maintain themselves they take to robbery in an organized fashion and it tends to become a habit or a way of life from which it is difficult to make a break. If one who has been found guilty of such an offence is released on furlough, there is no guarantee that he will not indulge in similar activity as soon as he is let large. None of the twin objects of punishment of imprisonment would then be served. Neither would he be reformed nor would the society remain immunized from his criminal activity for the specified period. It would be dangerous to the society to release him on furlough merely out of considerations of penal reform and humane treatment. As observed earlier, consideration of sympathy for him cannot be permitted to overshadow the consideration regarding security of the society. Similarly with regard to the lesser offence of robbery, it would be extremely hazardous to let the prisoner loose before the expiry of the term of imprisonment. It would be hazardous to do so because when one abandons honest labour for the career of theft or intimidation coupled with violence (which brings easy money though at some risk) it tends to become a way of life and the temptation is too great to resist when the prisoner is at large. The offences of robbery and dacoity, therefore, fall within a class by themselves. The classification is based on the danger inherent in releasing on furlough those who are proved to have unhesitatingly committed crimes against person as well as property and such crimes by their very nature are habit forming and repetitive. It is, therefore, not possible to say that the classification is irrelevant or that it has no nexus with the objective sought to be achieved. It will be recalled that the object is two-fold (1) to enable the convict to break the shackles of his habit and (2) to immunize the society atleast for a specified period. It was, however, argued by counsel that if a more serious crime like murder was not included in the list, there was no rational basis for including the offences relating to robbery and dacoity within the fold. Here again, the argument ignores the fact that by and large an offence of murder is committed by a person under some real or imagined provocation or in a moment of passion and the perpetrator of the crime usually has a motive or

animus against a particular individual or individuals and not against the society at large. There is, therefore, less danger of his committing a similar crime when he is on leave on furlough. Robbery and dacoity are offences which are directed against the entire society at large and the entire society is exposed to the danger emanating from them. In case of murder only that person against whom the perpetrator has a motive or animus alone is exposed to danger from him and not others. So far as robbery and dacoity are concerned, any victim is a good victim and the entire society is exposed to the risk. It is, therefore, clear that the offences of robbery and dacoity fall in a different category. Whether or not the offence is more serious is not the relevant consideration for withholding furlough. The relevant consideration is whether his release will hamper his reform or expose the society to the very danger to shield from which the criminal is imprisoned. Therefore, the fact that murder may be by and large considered to be a more serious crime is not a circumstance which in any way impairs the reasoning underlying the selection of the offences falling under the specified class viz. the offences relating to robbery and dacoity. Again, the mere fact that some other offences also deserve to be included in the list of offences in respect of which furlough should not be granted (even if the argument is valid) is not a good ground for not including the offences of robbery and dacoity. By experimentation, and by gaining experience the list may be enlarged or modified from time to time. A classification which is otherwise rational and purposeful and bears a nexus with the underlying object of the legislation cannot be branded as obnoxious merely because another class also ought to be brought within the sweep of the legislation. It is not true to say that all evils must be remedied by the same legislation in order to be immune from the charge of discrimination. It is not a valid argument that the Legislature can legislate in respect of all evils or none. Legislation can be implemented by stages. The mere circumstance, that other class of offences may also be included within the list will not render the class which is actually included devoid of rational basis. Under the circumstances, it is not possible to uphold the contention that Rule 4(2) is discriminatory in character and is violative of Article 14 of the Constitution of India. We are of the opinion that the classification has a rational basis and has a distinct nexus with the underlying object of the legislation and that it does not introduce any element of hostile discrimination.

10. In the result, we come to the conclusion that Rule 4(2) is valid and intra vires and not vulnerable to the charge of being violative of Article 14 of the Constitution of India.

Both the points urged by the petitioner fail. The petition must, therefore, fail and be rejected. Rule is discharged.

Before parting we must place on record our appreciation for the assistance rendered by Mr. Daru as *amicus curiae*