
(2014) 12 BOM CK 0181

In the Bombay High Court

Case No : Criminal Writ Petition No. 1454 of 2014

Kumar Rama Gowda

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 04-12-2014

Acts Referred:

Citation : (2015) 1 BomCR(Cri) 227

Hon'ble Judges : S.S. Shinde, J;A.I.S. Cheema, J

Bench : Division Bench

Advocate : S.D. Kaldate, A.P.P, Advocates for the Appellant; N.C. Garud, Advocates for the Respondent

Judgement

S.S. Shinde, J.—Rule. Rule made returnable forthwith and heard finally, with the consent of the learned Counsel for the parties. This petition is filed for releasing the petitioner on personal bond by relaxing the condition of furnishing surety.

2. It appears that the petitioner is undergoing sentence in Paithan Open Jail. The petitioner applied for furlough leave. It further appears from perusal of Exhibit A, Page No. 7 of the compilation of the petition that the petitioner was directed to be released on furlough leave on executing personal bond for Rs. 5000/- and surety from relative and second non-relative surety for Rs. 5000/- each. However, the petitioner could not arrange for sureties.

3. The learned Counsel appearing for the Petitioner invited our attention to the unreported judgment of this Court in the case of (Dipak s/o. Sudhakar Wakalekar Vs. State of Maharashtra and others), in Criminal Writ Petition No. 848 of 2010 and connected writ petitions, dated 6th June 2011 and submitted that this Court in similar facts situation, allowed the petitions of the convicts and observed that the authority should not insist for bond being executed by the relatives of the petitioners and petitioners in those petitions, be released on furlough/parole on the strength of the personal bond submitted by them as petitioners are confined in open jail.

4. The fact that the petitioner is lodged in Open Prison, Paithan, is not disputed by the learned A.P.P. The Full Bench of the Bombay High Court in the case of Clarence Brandenburg Vs. State of Ohio, 395 U.S. 444 (1969) observed as under:

"23. In the light of the discussion made above, we hold that as per the proviso to Rule 6 of the Rules 1959 a convict confined in open prison can be released on furlough by the sanctioning authority by dispensing with the requirement of execution of bond by the relatives. We hold that a convict confined in open prison can be released on parole by the authorities by dispensing with requirement of execution of bond by the relatives."

5. The Full Bench of Gujarat High Court in the case of Clarence Brandenburg Vs. State of Ohio, 395 U.S. 444 (1969) , has taken a view that wherein the convict is not able to execute the surety of the relatives, in that case the authorities have discretion to accept personal bond submitted by the convict and release him on furlough/parole.

6. In that view of the matter, the authorities would consider the prayer of the petitioner for releasing him on furlough in the light of observations here-in-above, without insisting for sureties of relatives and by accepting the personal bond of the petitioner, as expeditiously as possible, however within two weeks from today.

7. Rule made absolute on the terms indicated above. The writ petition stands disposed of, accordingly.

8. Learned A.P.P. undertakes to communicate this order to the concerned authorities by fastest mode of service. Parties to act upon authenticated copy of this order.