
(1994) 02 GUJ CK 0008
In the Gujarat High Court

Maganbhai Parsangbhai

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 01-02-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 302

Citation : (1994) 2 GLR 977

Hon'ble Judges : K.R. Vyas, J;K.J. Vaidya, J

Bench : Division Bench

Judgement

K.J. Vaidya, J.—The question which we have been incidentally called upon to decide in this petition is - "Whether it would be safe, that is to say, in the overall interest of Society, for the authority concerned to grant first parole or furlough leave to the prisoner, without there being any material on the record, either by way of his criminal antecedents prior to his conviction and/ or that about the nature and seriousness of the alleged offence and its attending circumstances for which he was undergoing imprisonment in Jail, in order to enable it to assess his criminal character, in the first place to appreciate the likelihood of his committing same or similar offences and/or in the second place, the probability of his absconding in the event of his release?

2. The above question arise this-wise. Petitioner-Maganbhai by the present Special Criminal Application under Article 226 of the Constitution of India has challenged the impugned order dated 10-8-1993 passed by the Inspector General of Prisons rejecting his first furlough on usual ground, viz., "adverse police opinion", inter alia praying for quashing and setting aside the same and to release him forthwith on the first furlough leave on usual terms and conditions.

3. It appears that the petitioner was convicted for the alleged offence punishable u/s 302 of the Indian Penal Code and sentenced to undergo R.I. for life by the learned Addl. Sessions Judge, Surat and that he is in Jail since 19-5-1990. It also appears that after conviction, he has not been released either on parole or

furlough leave so far. Further, at this stage, there is indeed nothing on the record before this Court to appreciate firstly the criminal antecedents; if any prior to his conviction, secondly, the material about the nature and seriousness of the alleged offence and its attending circumstances for which he was undergoing imprisonment in Jail and thirdly, whether pending trial petitioner was on bail and in case if at all he was so released, whether he has abused his liberty either by committing same or similar type[s] of offence[s] and/or threatened the family members of the deceased and/or the prosecution witnesses]. Of course, it appears that while dismissing the furlough application, the Inspector General of Prisons has relied upon the usual mechanical adverse police opinion which standing by itself is not sufficient either to allow or to dismiss petitioner's rightful first furlough. Under the circumstances, since the petitioner has prayed for releasing him on furlough for the first time, bearing in mind the overall public interest we are indeed quite anxious to find out whether by releasing him so, we are likely to invite any risk or trouble to the Society in general, and the members of deceased family in particular? Now, so far as the present petition is concerned, the same is as blank and laconic as it could be, as except the sketchy details about the impugned judgment and order of conviction and sentence u/s 302 of I.P.C. and the learned Sessions Judge who convicted him, there is nothing to indicate as to what was the prosecution case and what was alleged in particular against him. In short though the petitioner desires to be released for the first time from Jail, after his conviction and sentence in serious offence u/s 302 of I.P.C., he has not stated a word about his criminal background, in order to give some idea about his criminal character. Any prisoner seeking discretionary relief under Article 226 of the Constitution of India is supposed to be fair and honest enough in furnishing full and true facts. In other words, if the material facts are suppressed, his petition is liable to be dismissed on the said ground alone. Now not only the prisoner but even the Inspector General of Prisons who rejected the first furlough on the ground of adverse police opinion does not appear to be aware of the criminal background of the prisoner. Under the circumstances, simply to act mechanically upon the stock ground of "adverse police opinion" in a given case may prejudice the prisoner because irrespective of his criminal character, every family member of the deceased in view of inimical relations would not like the prisoner to be released either on parole or furlough leave, and accordingly, they may quite conveniently allege that if the prisoner is released they apprehend danger to their life and liberty and thereby breach of peace. Rather, this will be the common reply from family members of all the deceased persons. Now, in a given case, this reply may be quite true but before the same is accepted as having any substance, the same is required to be weighed, tested and appreciated in the context of the criminal antecedents/character of the concerned prisoner and the facts and circumstances under which he was driven to commit the offence and accordingly came to be convicted and sentenced for the same. We are quite conscious of the fact that furlough is an important conditional right of the prisoner and that, as far as possible, it should be granted. Yet at the sametime, our sympathetic humanistic approach to the prisoner

cannot be allowed to take the driver's seat to control our judicial discretion, overlooking altogether equally important, if not more, the public interest involved. In other words, we cannot allow our judicial sympathetic consideration leaning in favour of the prisoner to be inadvertently even used as a plank to permit him to have free drive in society and thereafter to commit more offences. No doubt, all the convict prisoners are not necessarily that dreaded dragons but before the Court finds out whether he is the type of the dreaded one or not, there should be some material before it to screen the prisoner regarding his criminal potentiality and inner burning feeling of vendata against the members of the deceased family and/or that of the prosecution witnesses] before he is to be so released on his first parole or furlough leave. Not for a moment we intend to suggest that once a person is convicted for serious offences, he should not be granted parole and/or furlough and thereby be allowed to mingle with the social stream. This is not the point. In fact, we are indeed quite conscious of the humanistic aspect involved in dealing with the convict prisoners and their occasional release on parole or furlough as it often helps them out in letting off their pent-up steam, feelings of bitterness and the wrath against the society, who in a given case, one does not know may be quite innocent and yet as the misfortune would have been, had become a victim of the hostile circumstances. Even the hardened criminal deserves some human treatment as this is one of the simple, honest and the best way to neutralise his bitterness and regain his confidence to win him back reclaiming to the society as its useful component. Thus, in fact, no effort should be spared to win back any prisoner lost to the society to reclaim him as its useful component. Of course, it is quite true that this lofty humanistic social philosophy and the resultant idealistic zeal and zest of helping out the criminals should not be mechanically implemented, irrespective of some cautions at the cost of grave risk to the society, for what ought we know that in case if the burning fire of vendatta has still not cooled down and the brute in him may once again overtaking, let-loose him in the society to quench the thirst for crime and the revenge. It is this apprehension and anxiety for the society which must be present to the mind of all the concerned authorities particularly when the prisoner is to be released on his first parole or furlough leave. This could be done only by closely screening the criminal character of the prisoner. Accordingly, before releasing any prisoner on his first parole/furlough leave, if this much care is not taken and the orders are passed just mechanically either granting or rejecting the same, both the Jail authorities and the Courts are likely to blunder-away to the point of no return where, in case, the social interest is once got victimised and sacrificed, repentance would hardly be a remedy to solve and compensate the damage caused to the society. As a matter of fact, it is too well-known to be told the reason as to why after the accused is convicted, he is sent behind the prison bars. It is firstly with a view and abundant caution to see that after the commission of the alleged offence he is not kept at large enabling him to repeat the offence and put members of the society once again in trouble, and secondly, with a view to deter and impress upon him that person committing offence, i.e., violating the freedom of someone in the society, the

punishment is the curtailment of his own irresponsible freedom For how much period he is to be kept in Jail is the discretion of the Court, depending upon the gravity and seriousness of the offence and the criminal character of the accused. Thus, once the Court having convicted and sentenced the accused and thereby finding it fit to take him out of the society isolating him from the main social stream and thereby keeps him out of the harms why so that the society can sleep quietly and heave sigh of relief, the same should not be lightly disturbed, in case the prisoner asks for first parole or furlough, without properly screening his criminal background.

In this view of the matter, the cases wherein the Jail authorities and the Courts are required to decide in particular the first parole or furlough application, they are supposed to be on the extreme guard as if they are the guards of the social interest. It cannot afford to doze and pass any order mechanically either granting or refusing the first parole/ furlough leave application. Accordingly, while exercising the discretion in matter of first parole/furlough, there indeed should be some tangible material before the concerned authority/Court to enable it to screen and assess the possibilities of the convict prisoner of either absconding and/or harassing the family members of the deceased and/or the prosecution witnesses resulting into the breach of peace If this material is not there and in absence of the same, the decision is taken, it is very likely that the concerned authority/Court was taking a plunge in the darkness forgetting its duty, sacrificing the public interest This simply cannot be done. It is with this anxiety only that we are of the firm opinion that before deciding such types of matter, the concerned authority must have before it the concrete and complete facts regarding the background of the convict prisoner. For this, the Court/authority could indeed be best assisted only if it is brought to its notice - (2) the brief resume of the prosecution case stating therein (a) the motive, (b) part played by the prisoner, (c) weapon used by him, (d) number of blows given, (e) on what part of the body, (f) subsequent conduct, (g) whether there was any deep-seated enmity [which may once again spark off the chain of further murders, if released on parole or furlough], (h) whether directly or indirectly any threat administered to the members of the deceased family and/or to the prosecution witnesses, (2) his behaviour in Jail, etc. etc. These are the material factors, in absence of which, ordinarily, neither the Court nor the authority would be in a position to take a just and proper decision in the matter of releasing the convict-prisoner on his first parole/furlough. Therefore, whenever a convict prisoner moves the Court/ authority for first parole/furlough, more particularly when he is represented by his learned Advocate, he must state in detail all the facts enlisted above so as to provide a background to the decision taking authority whether he deserves to be released on first parole/furlough or not. Merely stating that he came to be convicted for the alleged offence u/s 302 of I.P.C. or for whatever other offences is not sufficient. It is the first principle that when any citizen moves the Court under Article 226 of the Constitution, he must approach the Court with all fairness and clean hands stating true, complete and full facts and that there is no

such privilege conferred upon him that merely because he is a convict-prisoner, he can maintain calculated silence over the material points having direct bearing on the decision taking process of the authority. In fact, what are his criminal antecedents, what is the prosecution case and in what manner the alleged incident took place as a result of which he came to be convicted and sentenced are the relevant facts which are indeed within the special knowledge of the concerned prisoner, and therefore, he is supposed to state the same truly and fully in his petition, while applying for his first release on either parole or furlough. At the sametime, it also does not absolve the Jail authority from maintaining the complete record of the prisoner of its own which can be referred to and verified immediately when his first parole/furlough is received and/or during his release from Jail on the completion of 14 clean years of imprisonment are required to be decided, in case of life sentence. For this, as stated above, what is required to be done by the Jail authorities is to maintain complete record of the criminal background of the prisoner consisting of (i) the criminal antecedents, if any prior to his conviction, (ii) the material about the nature and seriousness of the alleged offence and its attending circumstances for which he was undergoing imprisonment in Jail, and (iii) whether pending trial, the petitioner was on bail, and in case if at all he was so released, whether he has abused his liberty either by committing the same or similar type of offence(s) and/or threatened the family members of the deceased and/or the prosecution witness (es). The Jail authority is not supposed to dig well as and when they apprehend fire, i.e., they are not supposed to collect the information about the background of the prisoner at the last moment when he moves for his first parole and/or furlough leave. The Jail authorities are supposed to be quite alive to the humanitarian aspect, viz., in a given case either when some close relatives of the prisoner is inflicted with serious illness or is on the death-bed or requires some emergency operation to be performed or has expired and that his presence is necessary to attend the cause. Accordingly, if the authorities are ready with the criminal bio-data, as referred to above, it would be easier for them to decide application at the earliest possible and release the prisoner on usual terms and conditions or under tight police escort for some temporary period, as the case may be.

4. Turning to the facts of the present case, except four-lined cryptic averments in the petition, there is indeed nothing by way of Criminal background on the basis of which we can screen the prisoner and safely exercise our discretion while deciding this matter. It is for this reason only that pending final hearing and disposal of this Special Criminal Application, we requested the learned A.P.P. Mr. Dave to call for the record and furnish us the background, if any of the prisoner. Since no such record was available with the Jail authorities, the learned A.P.P. after perusing the appeal papers informed us that the petitioner alongwith 14 others was involved in forming an unlawful assembly and committing five murders. We are also told that previous to the date of the incident, some dispute had taken place. This, in short, prima facie gives us an idea as to what sort of a

dangerous person the prisoner is. Now if such a person by mistake even is released on his first furlough, what is the guarantee that his highly inflammable nature has been controlled and that he has cooled-down and become an improved citizen? Further, what ought we know on being released on first furlough, he would not repeat the same or similar type of offence (s) disturbing the law and order? Further still, what is the guarantee about the safety of the convict-prisoner himself and the likelihood of breach of peace taking place at the instance of his rivals. These are some of the anxieties which any responsible authority interested in safety of the Society and the convict prisoner must entertain as its foremost duty before the prisoner is ordered to be released from Jail on his first parole/ furlough leave. Taking into consideration the fact that as many as five persons have already lost their life, there should not be any more casualties or breach of peace as a result of some mechanical orders granting first parole/furlough merely guided by the lofty ideals favouring prisoner, without our legs being on the ground that is to say, what could happen to the Society! It also appears that in the present case, there was an adverse police opinion and that is why the authority did not grant the first furlough. We have been read-over the statements of the relatives stating their anxiety that if the prisoner-convict was released on his first furlough, there was likelihood of breach of peace. No doubt, in every murder case, whenever the prisoner wanted to be released on either parole and/or furlough, the relatives are bound to come out with some such stock patent allegations that they apprehend danger to their life and property. In a given case, they may or may not be right. But in cases where the background is like the one in the present case where five murders have taken place on a simple quarrel over money, not to attach any weight to the statements of family members can be indeed quite hazardous. Under the circumstances, we have no alternative left but to dismiss this petition solely on the ground that petitioner has not posted us with full and true material having direct bearing on the decision whether he should be released on first furlough leave. We may clarify that if the petitioner once again makes afresh application for furlough to the authorities, the authorities bearing in mind the attending circumstances which stand in favour of the prisoner to entitle him for first furlough, may decide the same according to law after obtaining genuine police opinion.

5. At this juncture, it will not be out of place to mention here that infact this Court [Coram: R.A. Mehta and B.C. Patel, JJ.] in Special Criminal application No. 768 of 1989 decided on 21-4-1992, has voiced its grave and serious concern and anxiety by requesting the learned Advocates appearing for the convict-prisoners that when they apply for the first furlough/parole, they should give full and true facts of the prosecution case as well as a copy of the impugned judgment and order annexed with the petition. Though this anxiety was voiced long back on 21-4-1992, it is indeed unfortunate that till today the situation has not improved and it is under these circumstances that we have been constrained to come out with such a long order to impress upon the concerned learned Advocates to see that the first parole/furlough cannot be a matter of mechanical exercise of

powers in absence of the particulars desired by the Court are furnished. Such a similar information should also be furnished before the Jail authorities so that they can also take just and proper decision.

6. In view of the aforesaid discussion, it would indeed be quite proper to direct all the subordinate Courts of the State to immediately furnish one legible copy of the impugned judgment and order of conviction and sentence to the Jail authorities in order to facilitate them to decide the first parole/ furlough leave application. Secondly, after the receipt of the aforesaid copy of the judgment and order, the Jail authorities in their turn should also call for the criminal antecedents of the convict prisoner from the D.S.P. or Commissioner of Police of the concerned area, if there be any, and keep the same as a part of the criminal record of the convict-prisoner.

7. In the result, this petition fails and is dismissed. Office is directed to forward a copy of this judgment immediately to [i] The Secretary. Home Department, Gujarat State, Sachivalaya, Gandhinagar, [ii] All the Criminal Courts of the State, and [iii] The Inspector General of Prisons, Gujarat State, Ahmedabad.