
(2017) 08 BOM CK 0131
In the Bombay High Court
Case No : 167 of 2017

Manik Bapurao Shejal

APPELLANT

Vs

Dy. Inspector General (Prisons), & Anr.

RESPONDENT

Date of Decision : 01-08-2017

Acts Referred:

Indian Penal Code, 1860, Section 302,
Section 34 -
Prisons (Bombay Furlough and Parole) Rules, 1959, Rule 6

Citation : (2017) 08 BOM CK 0131

Hon'ble Judges : P. B. Varale, M. G. Giratkar

Bench : DIVISON BENCH

Advocate : G. S. Agrawal, J. Y. Ghurde

Judgement

1. Present petition is against the impugned order dated 5-11-2016 passed by the respondent no. 1.

2. It is submitted that the petitioner has been convicted for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. He is undergoing sentence of life imprisonment at Open Prison, Morshi. It is submitted that the petitioner submitted an application for releasing him on furlough to the respondent no. 2. The respondent no. 2 forwarded the said application to the respondent no. 1. The respondent no. 1 vide order dated 5-11-2016 mechanically rejected the application without proper application of mind. It is submitted that the respondent no. 1 has miserably overlooked the provisions governing release of convict on furlough. It is submitted that Rule 6 of the Prisons (Bombay Furlough and Parole) Rules, 1959 provides that furlough should not be granted without a surety, same is not mandatory as there are exception to it which are provided further in proviso to Rule 6 as under :

"Provided that the sanctioning authority may dispense with the requirement of execution of such bond by relatives of prisoners confined in Open Prisons as defined in clause (b) of Rule 2 of the Maharashtra Open Prisons Rules, 1971."

It is submitted that impugned order passed by the respondent no. 1 on the ground that surety is not ready to execute surety papers, is liable to be quashed and set aside.

3. The petition is strongly opposed by the respondents by filing reply. It is submitted that as per the Rules, the petitioner has to provide surety for his release. The petitioner submitted the name of surety. Surety of petitioner is not ready to execute the surety bond and, therefore, his application for furlough is rightly rejected.

4. Heard learned counsel Shri Agrawal appointed for the petitioner. He has pointed out us the decision of Full Bench of this Court and submitted that the impugned order is liable to be quashed and set aside.

5. Learned Additional Public Prosecutor Shri Ghurde supported the impugned order.

6. The respondent no. 1 rejected the application of the petitioner on the ground that surety of the petitioner not ready to execute surety bond. In the case of Dipak Sudhakar Wakalekar Vs. State of Maharashtra and ors. reported in 2011 Cr.L.J. 3263, Full Bench of this Court has held as under :

Prisons Act, 1894. Section 59 of Prisons (Bombay Furlough and Parole) Rules, 1959. Rules 6, 10 - release of prisoner on parole or furlough. Procedure - prisoner confined in open prison can be released on parole or furlough by sanctioning authorities by dispensing with requirement of execution of bond by his relatives.

7. Full Bench of this Court in the above cited decision in paragraph 23 has observed that :

"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. ..."

8. In the present petition, there is no dispute that the petitioner is undergoing imprisonment in Open Prison at Morshi. Therefore, in view of proviso to Rule 6 of the Prisons (Bombay Furlough and Parole) Rules, 1959 and in view of the above cited judgment, respondent authorities ought to have released the petitioner on furlough leave without insisting for surety. Hence the petition deserves to be allowed. Accordingly, we allow the petition. Impugned order passed by the respondent no. 1 is hereby quashed and set aside. Respondents are directed to release the petitioner on furlough.

9. Fees of learned counsel appointed for the petitioner is quantified at Rs. 1500/-