
(2002) 04 BOM CK 0062

In the Bombay High Court

Case No : Criminal W.P. No's. 165 to 167 of 2002

Manjulabai Gulabe

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 19

Citation : (2003) BomCR(Cri) 97 : (2002) 3 BOMLR 782 : (2002) 3 MhLj 226

Hon'ble Judges : V.M. Kanade, J;R.G. Deshpande, J

Bench : Division Bench

Advocate : N.A. Badar, Kalsi and V.M. Deshpande, for the Appellant; D.B. Patel, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V.M. Kanade, J.—All these three criminal writ petitions have been sent through jail and in all these three petitions, the petitioners are seeking parole for a period of 4 weeks in order to attend the marriage of Miss Savitri who is the daughter of Manjulabai the petitioner in Criminal Writ Petition No. 165/02, sister of Devanand who is the petitioner in Criminal Writ Petition No. 166/02 and daughter of Kisna who is the petitioner in Criminal Writ Petition No. 167/02. All these three petitioners are in jail and are convicted for having committed the offence punishable u/s 302 read with Section 34 of the Indian Penal Code. Their conviction has been confirmed by this Court and also by the Apex Court. The applications made by the petitioners to the Competent Authority, have been rejected on the ground that they are not entitled to get furlough because they have not completed 2 years of sentence as per Rule 3 of the Furlough Rules and on the ground that they are not entitled to be released on parole because under Rule 19, the prisoners are not entitled to be released on parole on the ground of marriage of their close relatives.

2. In these three petitions since the petitions were sent through jail, we have asked Shri V.M. Deshpande, Advocate to appear on behalf of Kisna Gulabe in

Criminal Writ Petition No. 167/02 as amices curie to assist this Court. Similarly, we have appointed Miss Kalsi, Advocate to appear on behalf of Devanand Gulabe in Criminal Writ Petition No. 166/02 and Shri N.A. Badar, Advocate to appear on behalf of Manjulabai in Criminal Writ Petition No. 165/02.

3. Rule made returnable forthwith and heard with the consent of the parties.

4. We have heard Shri V.M. Deshpande, Shri N.A. Badar and Miss Kalsi, the learned counsel appearing on behalf of the petitioners and Shri D.B. Patel, learned A.P.P. appearing on behalf of the State. Shri D.B. Patel learned A.P.P. appearing on behalf of the State, submitted that at the outset there is no dispute about the fact that the marriage of Miss Savitri who is the daughter of Kisna and Manjula and sister of Devanand, is going to take place on 3rd of May, 2002 and that all the 3 members in the family are in jail. Shri V.M. Deshpande, learned counsel appearing on behalf of Kisna who was leading the arguments in all the three matters, has taken us through the various charts which are provided by the petitioners wherein the particulars of furlough and particulars of parole have been given. In the case of Kisna the particulars of furlough are as given in the chart placed at page No. 10. Kisna has not been released on parole at any time in the past. Shri Deshpande submitted that from the record it is clear that the petitioner Kisna has presented himself on time on completion of his period of furlough and has never overstayed or has never absconded whenever he was released on furlough. He has submitted that from 4-11-1996, he was released on furlough on 4 occasions and on every occasion he has returned back to the prison. In the case of Sau. Manjula, she has not been released on furlough or parole. In the case of Devanand, he was released on furlough on 4 occasions and has always returned on due dates. The particulars are given in the chart filed in the case. The prisoner Devanand has never been released on parole previously.

5. In order to appreciate the submissions made by the counsel for the petitioners and respondents, it is necessary to take into consideration the relevant Act and the Rules made in that behalf. The Prisons Act of 1894 being Act No. 9 of 1894 has defined the furlough system and the parole system under Sections 5(A) and 5(B) of the Prisons Act, 1894 which reads as follows :

"5(A) "Furlough system" means the system of releasing prisoners in jail on furlough in accordance with the rules for the time being in force."

"5(B) "Parole system" means the system of releasing prisoners in Jail on parole, by suspension of their sentences in accordance with the rules for the time being in force."

6. Pursuant to the powers conferred by Clauses 5 and 28 of Section 59 of the Prisons Act, 1894 (9 of 1894) in its application to the State of Bombay, the Government of Bombay had framed rules which are known as The Prison (Bombay Furlough and Parole) Rules, 1959 which are applicable to the Maharashtra and Gujarat. The power to grant furlough to a prisoner is provided under Rule 3. Rule 3 reads as follows :

"3. When Prisoner may be granted furlough . -- (1) A Prisoner, who is sentenced to imprisonment for a period exceeding one year but not exceeding five years, may be released on furlough for a period of two weeks at a time for every year of actual imprisonment undergone.

(2) A prisoner, who is sentenced to imprisonment for a period exceeding five years may be released on furlough for a period of two weeks at a time for every two years of actual imprisonment undergone :

Provided that a prisoner sentenced to imprisonment for more than five years but not to imprisonment for life may be released on furlough every year instead of every two years during the last five years of his unexpired period of sentence :

Provided further that a prisoner sentenced to life imprisonment may be released on furlough every year instead of every two years after he completes seven years actual imprisonment."

7. In the instant cases, the petitioners are not entitled to be released on furlough in view of the Sub-clause (2) of Rule 3 which specifically states that a prisoner is entitled to be released on furlough for a period of 2 weeks at a time for every 2 years of actual imprisonment undergone. In the instant cases, the petitioners have already been released on furlough either in the year 2002 or 2001 and therefore, they are not entitled to be released on furlough as per the said Rules.

8. The aims and objects of the Bombay Furlough and Parole Rules, 1959 are considered in detail by the Full Bench of the Gujarat High Court in the case of Bhikhabhai Devshi Vs. State of Gujarat and Others, . It is pertinent to note that the Full Bench of the Gujarat High Court in para 13 of the said Judgment have concisely stated the aims and objects. Para 13 is reproduced as follows :

"13. The parole and furlough rules are part of the penal and prison system with a view to humanise the prison system. Those rules enable the prisoner to obtain his release and to return to the outside world for a short prescribed period. The objects of such a release of prisoner can be read from para 101 of the report submitted by the All India Jail Manual Committee as also the objects mentioned in 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 constructive hope and active interests in life".

14. In the Statement of Objects and Reasons for Bombay (Prisons Amendment) Act No. 27 of 1953, the Jail Reforms Committee had recommended and the Government accepted the recommendation that -

"there should be the system of release of prisoners on furlough under which well

behaved prisoners of certain categories should, as a matter of right have a spell of freedom occasionally after they undergo a specified period of imprisonment, so that they may maintain contact with their near relatives and friends and may not feel uprooted from society, accepted these recommendations and also decided that the furlough period should count towards the prisoner's sentence.

The experience has shown that the system has worked satisfactorily. The Prisons Act, 1894 does not specifically provide for the grant of furlough and the remission of sentence consequent upon it. In order to place the system on a permanent footing and to enable the Government to delegate its powers to the Inspector General of Prisons, it is necessary that the Prisons Act, 1894 should be amended in its application to the State of Bombay."

15. Thus, the Legislature has put the furlough system in the Act and it is made a matter of right."

It is, thus, clear that so far as these rules are concerned, the aim and object of these rules, is to release the prisoners either on furlough or parole so that they may maintain contact with their near relatives and friends and may not feel uprooted from the society.

9. The provisions regarding grant of parole have been laid down under Rule 19. Rule 19 reads as follows :

"A prisoner may be released on parole for such period not exceeding thirty days at a time, as the Competent Authority referred to in Rule 18, in its discretion may order, in cases of serious illness, or death of nearest relative such as mother, father, sister, brother, children, spouse of the prisoner, or in case of natural calamity such as house collapse, floods, fire. No such parole or extension of parole shall be granted without obtaining a police report in all cases except in the case of death of his nearest relatives mentioned above :

Provided that a prisoner shall not be released on parole for one year after expiry of his last parole except in case of death of his nearest relatives mentioned above."

It is pertinent to note that Rule 19 gives only discretionary power to the Competent Authority to release a prisoner on parole in cases of serious illness or death of nearest relatives or in the case of natural calamity. The instance in which the discretion may be exercised by the Competent Authority has not been elaborately specified. However, it appears that the specific instances, by way of illustrations, have been mentioned in Rule 19. The Full Bench of the Gujarat High Court in the case of the Bhikhabhai v. State cited supra, however, has interpreted the said Rule 19 to mean that parole has to be granted only on a sufficient cause been shown by the Prisoner. In para 34 of the said Judgment the Full Bench of the Gujarat High Court has observed as follows :

"The learned Counsel for the petitioner has submitted that the prisoners surrendering late are disqualified for furlough only under Rule 4(10) and they are

not disqualified for parole. If they can be released on parole and if there is no danger to the society emanating from them, there is no reason why furlough should be denied to them. It is to be noted that furlough and parole have two different purposes. Furlough is a matter of right, parole is not so. Furlough is to be granted periodically under Rule 3 irrespective of any particular reason merely with a view to enable the prisoner to have family and social ties and to avoid ill effects of continuous prison life, and the period of furlough is treated as remission of sentence. Since furlough is to be granted for no particular reason, it can be denied in the interest of the Society; whereas parole is to be granted only on a sufficient cause (Rule 19) such as cases of severe illness or death of any member of the prisoner's family or of his nearest relative or for other sufficient cause. Therefore, parole is not a matter of right and only when there is a sufficient and serious cause, the Society and the jail administrator may, sometimes, have to take some risk to release the prisoner on parole, but that would be no ground for releasing the prisoner on routine furlough irrespective of his past conduct and performance. Even parole may be denied to a prisoner even when he makes out sufficient cause for release on parole if the Competent Authority is satisfied on valid grounds that release of a prisoner on parole would be against the interest of the society or the prison administration. For example, a prisoner who has once escaped or attempted to escape or who is likely to escape or has such means and resources, may be denied parole because under Rule 19, the Competent Authority has discretion "may" to grant or not to grant parole even when cause is shown. Therefore, comparison of release on parole and furlough is absolutely uncalled for. This contention of the petitioner deserves to be rejected."

10. The Division Bench of the Bombay High Court in the case of Jayant Veerapa Shelly v. State of Maharashtra, has held that the Prisons Rules, 1959 in respect of furlough and parole would not apply to the grant of parole to a convicted person whose appeal is pending before the Appellate Court and that the Appellate Court would be in a position to pass an appropriate order as it is empowered u/s 389 of the Code of Criminal Procedure. In the instant case, however, the appeal of the petitioners has already been dismissed and the Apex Court has confirmed the orders of the High Court and as such no appeal is pending either in this court or Apex Court. In the case of Poonam Lata Vs. M.L. Wadhawan and Others, , the Supreme Court has placed the history of grant of parole and has observed that the release on parole is a part of the reformatory process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen. The Supreme Court has further observed that parole is thus a grant of partial liberty or lessening of restrictions to a convict prisoner. However, release on parole does not change the status of the prisoner. It will be profitable to consider the observations of the Apex Court made in para 8 of the said Judgment which are as follows;

"There is no denying the fact that preventive detention is not punishment and the concept of serving out a sentence would not legitimately be within the

purview of preventive detention. The grant of parole is essentially an executive function and instances of release of detainees on parole were literally unknown until this Court and some of the High Courts in India in recent years made orders of release on parole on humanitarian considerations. Historically "parole" is a concept known to military law and denotes release of a prisoner of war on promise to return. Parole has become an integral part of the English and American systems of criminal justice intertwined with the evolution of changing attitudes of the society towards crime and criminals. As a consequence of the introduction of parole into the penal system, all fixed term sentences of imprisonment of above 18 months are subject to release on licence, that is, parole after a third of the period of sentence has been served. In those countries, parole is taken as an act of grace and not as a matter of right and the convict prisoner may be released on condition that he abides by the promise. It is a provisional release from confinement but is deemed to be a part of the imprisonment. Release on parole is a wing of the reformatory process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen. Parole is thus a grant of partial liberty or lessening of restrictions to a convict prisoner, but release on parole does not change the status of the prisoner. Rules are framed providing supervision by parole authorities of the convicts released on parole and in case of failure to perform the promise, the convict released on parole is directed to surrender to custody. (See: The Oxford Companion to Law, edited by Walker, 1980 Edn., P. 931, Black's Law Dictionary, 5th Edn., P. 1006, Jowitt's Dictionary of English Law, 2nd Edn., Vol. 2, P. 1320, Kenny's Outlines of Criminal Law, 17th Edn., pp 574-76. The English Sentencing system by Sir Rupert Cross at pp 31-34; 87 et seq., American Jurisprudence, 2nd Edn., Vol. 59, pp 53-61, Corpus Juris Secundum, VI. 67, Probation and Parole, Legal and Social Dimensions by Louis P. Carney). It follows from these authorities that parole is the release of a very long term prisoner from a penal or correctional institution after he has served a part of his sentence under the continuous custody of the State and under conditions that permit his incarceration in the event of misbehaviour."

11. The Apex Court, however, has reiterated that while exercising the power under Article 226 of the Constitution, the High Court cannot release the prisoner on parole. However, the only power that is available to the Court is to quash the order, in case it is found to be illegal.

12. Shri N.A. Badar, learned counsel appearing on behalf of Manjulabai w/o Kisna Gulabe - petitioner in Criminal Writ Petition No. 165/02 has relied upon the two judgments of the Apex Court which he has searched on the internet and the said Judgment of the Supreme Court has been given in CRL. M.P. No. 6676/2001 in Criminal Appeal No, 498/2000, in the case of Zafar v. State of U.P. in which The Apex Court has passed the following order.

"Heard the learned counsel for the applicant and the learned counsel appearing for the State who has no objection if the applicant-appellant is released for a

definite period for his daughter's marriage. We direct that the applicant-appellant Zafar be released on bail till 31st of October, 2001 on his furnishing two sureties of Rs. 25,000/- each. He should further undertake that he shall surrender in the jail from where he is being released on or before 31st October, 2001. During the period of release, the said applicant shall not leave Gorakhpur town. The application stands disposed of accordingly."

Similarly, he has relied upon the Judgment of the Apex Court in the case of Mochi Raju v. State of Gujarat wherein the Apex Court in Cri. M.P. Nos. 380-381 of 2001 in Criminal Appeal No. 75-76/2000, has passed the following order:

"Heard learned counsel for the parties in the Criminal Miscellaneous Petition. In view of the fact that the petitioner is an elder brother of Suresh, who is getting married on 21st January, 2001, we consider it fit and proper to release the petitioner on parole for a period of one week from the date of his release. He shall be released on furnishing a bond in a sum of Rs. 10,000/- (Rs. Ten thousand) and two sureties in a like sum to the satisfaction of the Sessions Judge, Rajkot. After the expiry of that period, the petitioner should surrender before the concerned authority. The Petition is disposed of accordingly."

13. In the instant cases before us the Competent Authority has declined to release the prisoners on parole only on the ground that Rule 19 of the said Rules which is reproduced hereinabove, does not in terms state that the prisoner would be entitled to be released on parole on account of attending the marriage of his nearest relatives. Rule 19, in its present form, has been substituted by Maharashtra vide Notification No. PAR. 4582/1/PRS-2, dated 21-11-1989. Prior to the amendment, the prisoner was entitled to be released on the ground of serious illness or death of any member of the prisoner's family or of his close relatives or for any other sufficient cause. It is submitted by the learned A.P.P. appearing on behalf of the State that the "words" or for any other sufficient cause, have been omitted and, therefore, the ground of attending the marriage of the relatives would not be covered under Rule 19.

14. It is pertinent to note that the Government of Gujarat where the said rules of parole and furlough are applicable, has issued a Circular No. MISC-1065-2064-Sachivalaya Ahmadnagar dated 31-12-1968 providing guiding principles for the release of the prisoner on parole as provided under Rule 19 of the Prison (Bombay Furlough and Parole) Rules, 1959, in which the sufficient causes, for grant of parole, have been enumerated from Clause (a) to (f). Clause (a) reads as follows :

"Marriage of the prisoner himself or any of his children or the marriage of the prisoner's sister if he has no living partner".

15. We have perused the various Acts and the Rules, Notifications issued by the Government from time to time and also the Judgment of the Apex Court, the decision of the Gujarat High Court, Judgments of this Court. In our view, under the peculiar facts of the present cases, the petitioners would be entitled to be

released on parole for a period of 4 weeks in the case of the mother and for 2 weeks in the case of the brother and father. In our view, the Competent Authority has construed the provisions of Rule 19 in a very narrow manner. The purpose of Rule 19 is to afford an opportunity to the prisoner to meet his relatives and to take part in not only the moment of sorrow, illness or death but also in the moment of joy such as a occasion of marriage of his daughter or sister. In the present case, father, mother and son i.e. the entire family is in jail and the marriage of the daughter is being performed. In our view, under the peculiar facts of the present case, the petitioners are entitled to be released on parole for a short period. It is not a case of the Competent Authority that the prisoners - the petitioners herein are likely to abscond or misuse that liberty. The past record of the prisoners - petitioners herein, is good inasmuch as they have returned on the due date at the end of the period of their furlough. There are no criminal antecedents in respect of these three prisoners. Distinction will have to be made in the case of the persons who have committed offence under peculiar circumstances, for the first time, in their life and they will have to be classified as offenders and not mere criminals and those persons, who have lived a life as criminals and are hardened criminals, would, therefore, fall under the different category and stringent rules will have to be applied and the provisions of Furlough and Parole which are provided will also have to be strictly complied with in their case. In the instant cases, it is submitted that so far as Manjulabai the petitioner in Criminal Writ Petition No. 165/02 is concerned, she was in jail throughout and on conviction she surrendered to the Police and the only role which is attributed to her in the said case, was that she had pelted stones. Be that as it may, the fact remains that the present petitioners are not hardened criminals and, therefore, the Competent Authority has clearly erred in applying the provisions of Rule 19 strictly in the letter and not in its spirit.

16. Under these peculiar circumstances, the petitioners are entitled to be released on parole. It must, however, be clarified that the petitioners herein are being released on parole and on temporary bail for a limited period of two weeks and four weeks. It must be clarified that there cannot be a strahjacket formula or hard and fast rule for the purpose of laying down any specified category of the cases which would amount to sufficient cause as has been observed by the Full Bench of the Gujarat High Court in the case of Bhikhabhai cited supra. The Competent Authority therefore will have to be taken into consideration the facts and circumstances of each case and accordingly decide the application for parole, in the instant cases, however, we are inclined to interfere with the order passed by the Competent Authority, by exercising our power under Article 226 of the Constitution of India and allow the instant criminal writ petitions.

17. In the result, the Criminal Writ Petition Nos. 165/02, 166/02 and 167/02 are allowed.

The petitioner in Criminal Writ Petition No. 165/02 viz. Manjulabai w/o Kisna Gulabe be released on parole immediately on her furnishing surety in the sum of

Rs. 5,000/- with P. R. Bond and after complying with the necessary formalities as required under the Rules, for a period of 4 weeks from the date of her release.

The petitioner in Criminal Writ Petition No. 166/02 viz. Devanand s/o Kisna Gulabe be released on parole immediately on his furnishing surety in the sum of Rs. 5,000/- with P. R. Bond and after complying with the necessary formalities as required under the Rules for a period of 2 weeks from the date of his release.

The petitioner in Criminal Writ Petition No. 167/02 viz. Kisna Ganpat Gulabe be released on parole immediately on his furnishing surety in the sum of Rs. 5,000/- with P. R. Bond and after complying with the necessary formalities as required under the Rules, for a period of 2 weeks from the date of his release.

Under the circumstances, there shall be no order as to costs.