
(2009) 04 BOM CK 0004
In the Bombay High Court
Case No : Criminal W.P. No. 213 of 2009

Mohamed Moin Faridulla Qureshi

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 02-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 432(1)
Penal Code, 1860 (IPC) — Section 120B, 148, 149, 302, 307
Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 4, 4(2), 4(3), 4(4), 4(6)
Prisons Act, 1894 — Section 59
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3(2), 3(3)

Citation : (2009) CriLJ 3807 : (2010) 2 RCR(Criminal) 204

Hon'ble Judges : S.P. Davare., J; N.V. Dabholkar, J

Bench : Division Bench

Advocate : Anil Piratwad, for the Appellant; N.N. Jadhav, APP, for the Respondent

Final Decision : Allowed

Judgement

N.V. Dabholkar, J.—The petitioner, who is convict in "Bombay Bomb Blast Case" has approached this Court for the purpose of challenging order dated 8-10-2008 passed by DIG Prisons Central Division, Aurangabad. Petitioner Mohamed Moin Faridulla Qureshi is presently lodged in Central Prison Harsool. Since prisoners release, if granted, is to occur at Harsool as he is lodged at Harsool and since his prayer for release on furlough is rejected by DIG Prisons, Aurangabad, we believe, Aurangabad Bench has jurisdiction to deal the matter since part of the cause of action arises within territorial limits of this Bench.

2. Rule. Rule made returnable forthwith. Heard by mutual consent.

3. The factual details necessary for adjudication of the petition may be narrated as follows:

After Bombay Bomb Blast, petitioner was arrested in connection with the said case for offence punishable under Sections 120-B, 148, 302, 307, 149 of the Indian Penal Code," and also u/s 3(2)(3) of TADA Act, on 20-4-1993. Advocate

Shri Piratwad states that since then he has not enjoyed any liberty. He was neither released on bail any time till now nor on parole or furlough. If the Writ Petition is allowed, this would be the first occasion that the petitioner would breathe fresh air outside the prison. We are informed that he is" sentenced to life imprisonment.

4. The application for furlough dated 17-9-2007 is rejected by DIG Prisons vide impugned order dated 8-10-2007 and the reasons for rejection of furlough could be gathered from the text. There was adverse report from Police Commissioner, Bombay that there is offence registered under the provisions of Indian Penal Code and TADA. However, it is clarified by advocate Shri Piratwad, Bombay Bomb Blast Case is the only case for which petitioner was an accused. Now no other prosecution is pending against him. Superintendent of Prisons has also recorded negative recommendations. The operative part of the order indicates that DIG Prisons was pleased to reject the application in the light of Rule 4(4) of the Prisons (Bombay Furlough and Parole) Rules, 1959.

5. We may analyse the reasons recorded by DIG Prisons. So far as adverse report of Commissioner of Police is concerned, there is no specific contention that any other case is pending and he is under-trial. Unfortunately, it must be said that description that offences under provisions of Indian Penal Code and TADA is registered against the petitioner, is wrong description when the trial has already ended in conviction. Although it is said that Superintendent Prisons, has informed accused being convict in Bombay Bomb Blast case and recommended that he may not be released on furlough, the order within its text does not state any reasons offered by Superintendent Prisons, for his adverse report.

In the reply filed by DIG Prisons, has tried to rely upon Rule 4(4) and 4(6) of the Prisons (Bombay Furlough and Parole) Rules, 1959, which provisions reads thus:

4. When prisoners shall not be granted furlough : The following categories of prisoners shall not be considered for release on furlough:

1. to 3....

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 tranquillity.

5....

6. Prisoners whose conduct is, in the opinion of the Superintendent of the Prison, not satisfactory enough.

6. We have already indicated from the text of the impugned order, the reasons recorded by the police authorities and Superintendent Prisons for negative recommendation. The Police authorities have simply said that the offence under Indian Penal Code and TADA Act is registered against the petitioner. DIG Prisons, in his order does not say that Commissioner of Police Bombay has

recommended in the negative because Commissioner of Police Bombay apprehends danger of public tranquillity or public peace, in case the petitioner is released on furlough.

The Superintendent Prisons has also said that the petitioner is a convict in a serious offence. The text of the impugned order does not indicate that the Superintendent Prisons, to have reported the conduct of the prisoner unsatisfactory. The report of police authorities and Superintendent Prisons, as reflected in the text of Impugned order, do not indicate that the adverse recommendation were founded on the reasons available under Sub-rules (4) and (6) of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959.

7. On reference to Rule 4, we are tempted to refer to Sub-rules (2) and (3) of Rule 4 which reads thus;

4. When prisoners shall not be granted furlough:

1. ...

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.

8. If at all, the legislature desired that the prisoners in the serious matters like Bombay Bomb Blast Case, should not be entitled to liberty of enjoying parole or furlough, legislature could have amended Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959.

9. Since these Rules which are framed in exercise of powers conferred by Clauses (5) and (28) of Section 59 of the Prisons Act, 1894 by the then Government of Bombay and since present Government of Maharashtra has not effected any amendment to these Rules, the statutory right of release on parole and furlough cannot be denied to the convicts of Bombay Bomb Blast Case, although that can be denied to the convicts under Bombay Prohibition Act.

10. We are also required to bind ourselves by judicial discipline. Advocate Shri Piratwad has annexed to the petition and relied upon as many as 05 orders passed by Division Benches at Bombay Seat in Criminal Writ Petition No. 2443/08, 42/2009, 686/2008, 1563/2008 and 1959/2008. In Writ Petition No. 2443/2008 it can be seen that furlough was rejected under Rule 4(4) of the Prisons (Bombay Furlough and Parole) Rules. In Writ Petition No. 1959/2008 Division Bench at Bombay has observed that merely because petitioner is a convict of Bombay Bomb Blast Case, the right to furlough cannot be denied since the same is statutory right.

11. We may add couple of more grounds which favour the release of petitioner. Within 18 days from today prisoner shall be completing 16 years actual imprisonment. For a life convict, minimum actual imprisonment is 14 years. We believe, by now, his case must have been referred to the State for being

considered u/s 432(1) of the Code of Criminal Procedure for premature release as in the case of other life convicts. After determination of categorisation, the picture would be clear as to how many years imprisonment he would be expected to under-go as a result of remission of reminder period over and above the period prescribed by the guidelines for particular category; inclusive of under-trial, imprisonment, set off and remission. Fact remains that the petitioner has, at least, already undergone, minimum required 14 years.

12. In the circumstances, we are inclined to consider the Writ Petition favourably, however by imposing stringent conditions upon the petitioner.

i. The petitioner is allowed to be released on furlough for a period of 14 (fourteen) days to be counted from the date of actual release. The date of release should be reckoned as day one and prisoner should report back on day fifteenth.

ii. He shall be released on furnishing two sureties of Rs. 10,000/- each (Rs. Ten Thousand only) who shall execute the bond before the Prison Authorities. One surety should be an adult male family member or close relative and another surety should be unrelated to the prisoner.

iii. The Prisoner should leave his address during the furlough period with prison authorities.

iv. The Prisoner shall give intimation of his having reached the residence to the local police station within whose territorial limits he is going to reside and he shall give intimation of his departure from the residence for reporting back to the prison.

13. Writ Petition is allowed in above terms and rule made absolute accordingly.