
(1994) 02 GUJ CK 0009
In the Gujarat High Court

Motisinh Kesrisinh

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 03-02-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Penal Code, 1860 (IPC) — Section 302, 392, 393, 394, 395

Citation : (1994) 2 GLR 1445

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

Bench : Division Bench

Judgement

K.J. Vaidya, J.—Petitioner Motisinh Kesrisinh undergoing life imprisonment in Central Prison at Ahmedabad, by this writ petition under Article 226 of the Constitution of India, has brought under challenge the impugned Order dated 27-12-1993, passed by the Inspector General of Prisons, Ahmedabad dismissing his application for first furlough leave, inter alia, praying for quashing and setting aside the same and to grant his due furlough leave forthwith.

2. To briefly narrate few relevant facts, the petitioner was convicted u/s 302 of I.P.C. and sentenced to suffer RI for life by the learned Addl. Sessions Judge, Narol by a judgment and order dated 15-2-1981. His appeal against the order of conviction and sentence stands dismissed by this Court and accordingly he is in jail right from the year 1981. It is his further case that during the entire tenure of his imprisonment, he has enjoyed twice parole and once furlough leave. He has also quite fairly stated in the petition that when he was released on second parole, he surrendered late by 2012 days in the year 1993, and that despite this fact, he was granted furlough by this Court wherein he had surrendered to the jail authorities in time. Under the circumstances, the grievance voiced by the petitioner is to the effect that though for his next furlough which had already become due, he had applied to the I.G. Prisons as long back as on 30th October, 1993 the same has been rejected mainly on the ground of his earlier late surrender by 2012 days, constraining him to file the present writ petition.

3. Mrs. S.S. Patel, the learned Advocate for the petitioner while challenging the impugned order passed by I.G. Prisons submitted that merely because the petitioner had surrendered late by 2012 days that by itself was hardly a ground to refuse his rightful further furlough, more particularly in view of the fact that this Court itself in Special Criminal Application No. 1328 of 1993 has granted him furlough wherein he had surrendered in time. Mrs. Patel further submitted that this eloquent circumstance alone constitute special fact entitling the petitioner to be granted his next furlough due, and accordingly, he be so released forthwith.

4. As against the above, Mr. K.T. Dave, the learned A.P.P. submitted that unfortunately in Special Criminal Application No. 1328 of 1993, the petitioner came to be released on furlough, on the very day of admission that is to say on 18-8-1993 and that too on the respondent for whatever reasons failing to bring to the notice of this Court, the earlier Order dated 21-1-1992 passed by this Court [Coram: Hon'ble Mr. K.G. Shah & K.R. Vyas, JJ.] in Special Criminal Application No. 123 of 1992 whereby his furlough came to be rejected. The said order reads as under:

Rule Mr. S.P. Dave, the learned A.P.P. waives service. The petitioner-convict, who is a prisoner in jail applied to the concerned authorities for furlough leave and that request having been rejected, he has tried to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution. What stares us in face is the admitted position that earlier when this prisoner was released in 1983 on parole, he bolted, and made himself scarce and some 2012 days after the due date on which he was supposed to surrender the Police could arrest and apprehend him, and take him to jail. This is perhaps, the grossest case of misuse of the privileges and leniencies shown to him under the Parole & Furlough concept. Such a prisoner, in our opinion, does not deserve any consideration from this Court under Article 226 of the Constitution. The petition, is on that ground alone, if not on any other, required to be rejected. The same is accordingly rejected. Rule is discharged.

The learned A.P.P. frankly submitted that had indeed his office been careful enough in rendering desired assistance to this Hon'ble Court in Special Criminal Application No. 1328 of 1993 by pointing out the Order passed in Special Criminal Application No. 123 of 1992 [supra], the said Court would have surely rejected the same. Under the circumstances, according to the learned A.P.P., since the petitioner was released on second furlough through sheer inadvertence and oversight that can never entitle him to further furlough.

5. Now having heard the learned Advocates appearing for the respective parties, it appears to us that the petitioner does not deserve to be released on furlough. The contention of Mrs. Patel that as this Court had previously released the petitioner on furlough despite his late surrender by 2012 days is indeed of no consequence in view of the fact situation highlighted by the learned A.P.P. In fact, Rule 4 of the Prisons

[Bombay Furlough & Parole] Rules, 1959 highlights in all the eleven categories of prisoners who shall not be considered for released on furlough, they are:

- (1) Habitual prisoners.
- (2) Prisoners convicted of offences u/s 392 to 402 (both inclusive) of the Indian Penal Code.
- (3) Prisoners convicted of offences under the Bombay Prohibition Act, 1949.
- (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) Prisoners who in the opinion of the Superintendent of Prison show a tendency towards crime.
- (6) Prisoners whose conduct is, in the opinion of the Superintendent of Prisons not satisfactory enough.
- (7) Prisoners confined in the Ratnagiri Special Prison.
- (8) Prisoners convicted of offences of violence against person or property committed for political motives unless the prior consent of the State Government to such release is obtained.
- (9) A prisoner or class of prisoners in whose case the State Government has directed that the prisoner shall not be released or that the case should be referred to it for orders.
- (10) Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough.
- (11) Prisoners convicted of offences under the Narcotic Drugs and Psychotropic Substances Act, 1985.

Now precisely, the case of the petitioner squarely falls within the ambit of Clause (10) of Rule 4, of above Rules. In this view of the matter, by no stretch of imagination it can be said that Inspector General of Prisons had exercised his discretion arbitrarily, calling for any interference at the hands of this Court! The discretion of the High Court by virtue of extraordinary powers under Article 226 of the Constitution of India cannot be lightly exercised in matters where the authorities have quite justly and properly exercised its discretion. How to manage and regulate the jail administration is essentially and entirely a concern and look out of the jail authorities and as long as the orders passed by them are just, fair and proper, this Court has no right or business to meddle with the same and thereby in the internal affairs of the Prison administration.

6. We are conscious of our wide extraordinary powers under Article 226 of the Constitution of India and more than that we are further conscious of our

restraints and bounds of unwarranted trespasses into the realm of administrative affairs where the impugned order is found to be just, fair and proper. Turning to the tell-tale gross facts of the instant case, it is quite clear that the prisoner was released on parole for few days and late surrendered by as many as 2012 days (that is to say 6 years and 22 days [?]) and that too with the help of police? This by no stretch of imagination can be said to be a trivial lapse to be ignored and countenanced lightly? Under the circumstances, if the prisoner despite his notorious record of late surrender by 2012 days is once again granted furlough on his mere asking, overstepping just and proper order passed by I.G. Prisons the same indeed would be quite demoralizing to the jail authorities. Once the sanction and fear of law and the authority fairly administering the same is lost from the mind of prisoners, both the Authority and Law will lose respect not only in the eye of prisoners but the public as well, and when this unfortunately happens, it would indeed be an open invitation to the disorder and mounting indiscipline in the jails, giving upper hand to the criminals. This situation would indeed make it absolutely difficult for the jail authorities to restore its image and the ultimate discipline in jails. Moreover, if the prisoner committing such gross lapses of late surrender are treated lightly by granting furlough whenever they desire, the same will not only embolden and encourage them to defy the jail discipline but the same may further as well stiffen and arrogate them to twist and raise their moustaches against the jail authorities defying and challenging them in all respects? We have been informed by the learned A.P.P. Mr. Dave that in all, about 192 prisoners after their release either on parole or furlough have not surrendered to the jail authorities and are still absconding? This alarming situation must set any one concerned with the law and order situation and the jail discipline to consider why such a situation has arisen? The obvious answer to this is perhaps sometimes little overdose of humanistic and the unrealistic approach and/or taking care-free attitude in the matter of releasing prisoners on parole or furlough by authorities as well as Courts at the cost of some deterrent influence on them? The over and undue leniency many a times ridicule and scoff at the very concept of sentencing the accused by the Court? Thus, in order to save the situation from further deterioration and to firmly enforce and maintain the jail discipline, little stricter view is required to be taken by refraining from intervening with the impugned orders of the authorities, whenever necessary. This is not to say for a moment that the jail authorities or this Court should mechanically refuse to consider the parole application, as one quite understand that in the life of a prisoner, a situation may arise where on a humanistic ground, he may be required to visit his house and meet relatives, of course under tight police escort. But at the same time, ordinarily if the prisoner wants to claim any sympathy on humanitarian grounds, before he so desires, he will have to qualify himself to deserve it by his conduct and behaviour in and outside the jail, which is entirely in his hands only and not with the jail authorities.

7. In the result, this Criminal Application fails and is dismissed. The impugned order passed by I.G. Prisons is confirmed. Rule made absolute.