
(2011) 05 BOM CK 0028

In the Bombay High Court

Case No : Criminal Writ Petition No. 258 of 2011

Murlidhar Ramchandra Bhalerao (in Jail)	APPELLANT
Vs	
State of Maharashtra and The Superintendent of Prison	RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 6

Citation : (2011) 8 RCR(Criminal) 2585

Hon'ble Judges : V.K. Tahilramani, J;M.L. Tahaliyani, J

Bench : Division Bench

Advocate : Nitesh Samundre, for the Appellant; T.A. Mirza, APP, for the Respondent

Judgement

V.K. Tahilramani, J.—Rule. Rule is made returnable forthwith and heard finally with the consent of Shri Samundre, learned Counsel for the Petitioner and Shri Mirza, learned APP for the Respondents.

2. The Petitioner had preferred an application for furlough. It came to be rejected by an order dated 08.12.2010. Being aggrieved thereby, this petition has been preferred praying that the said order be set aside and the Petitioner be released on furlough.

3. The learned Counsel for the Petitioner submitted that the application for furlough came to be rejected only on the ground that the surety proposed by the Petitioner was not willing to stand as surety for him. He submitted that in fact the surety proposed by the Petitioner is willing to stand as surety, hence the order of rejection deserves to be set aside and the Petitioner is entitled to be released on furlough. He has submitted that this is evident from the fact that the application for furlough has been rejected under Rule 6 of the Bombay Furlough and Parole Rules, 1959.

4. We have perused the order dated 08.12.2010 whereby the application for furlough came to be rejected. We find that in the said order it is also clearly

stated that on earlier occasion when the Petitioner was released from prison, he did not report back in time and he absconded. The police then traced the Petitioner, arrested him and brought him back to prison. No doubt it is stated that the said application is rejected under Rule 6, but on perusal of the entire order, it is clear that the application was rejected on the ground that he had absconded earlier and the fact that the surety proposed by him was not willing to stand as surety for him. Thus, even if the person he has proposed as surety is willing to stand as surety for him, it does not help the case of the Petitioner because the fact that he had absconded and the police had to arrest him, bring him back to prison remains, which is also a good ground for rejection of his application for furlough. One sentence in the order cannot be read in isolation and the entire order has to be read as a whole and its true meaning is to be understood. Thus, on going through the entire order, we do not agree with the learned Counsel for the Petitioner.

5. Thereafter, the learned Counsel for the Petitioner submitted that a convict has a right to be released on furlough and he cannot be denied this right. To support this contention, he has placed reliance upon the decision of a learned Single Judge of this Court in the case of Santosh Bhagwandin Bachharaj Vs. Superintendent, Central Prison, , wherein it is observed that prison authority cannot reject an ineligible request of due furlough of the prisoner, who has surrendered late in the past especially when punishment had been imposed on him as per the Rules for late surrendering. He pointed out that in this decision, it is observed that the prisoners, as of right, are entitled to furlough leave on furnishing appropriate and competent surety. As observed already by us, this is a decision of a learned Single Judge of this Court whereas the Division Bench of this Court while considering a case in similar circumstances, held that such misbehaviour can hardly be condoned and no unwarranted leniency can be shown to such a person or persons. In the case before the Division Bench of this Court also application of the prisoner for furlough came to be rejected on the ground that he had not surrendered in time. The said decision is in the case of Ramchandra Raghu Naik v. State of Maharashtra reported in 2005 ALL MR (Cri) 1919. In this case, it was observed that in a case where a prisoner does not report back to the prison after the expiry of the furlough leave period and overstays for a period of 93 days and even thereafter has to be arrested for the purpose of inducting him again in the prison, undoubtedly, it cannot be said that such a person deserves any leniency. Hence, the very same contention made in the case of Santosh (supra) that on account of punishment having been imposed, the Respondents would not be entitled to deny furlough leave was found to be devoid of substance and was rejected out rightly.

6. A similar view was taken by the Division Bench of this Court in the order dated 07.09.2010 in Criminal Writ Petition No. 1319 of 2007 (R.M.S. Khandeparkar and Mrs. V.K. Tahilramani, JJ.) in the case of Kisan Nathu Pardesi v. State. In the said case also the prisoner's application for furlough was rejected as he had not surrendered in time after expiry of furlough period and he had to be arrested and

brought back by the police. The prayer of the Petitioner in that writ petition that the Petitioner should be granted furlough as it was his right, was rejected.

7. Prisoners time and again claim that furlough is a right granted to them. Even assuming it is a right, once they have been given this right and they avail of it, they have a corresponding duty to report back to the prison in time. The prisoner cannot conveniently forget this duty and then again come to the Court claiming that they have a right to be released on furlough. The prisoner cannot abuse the right and then again claim the same relief from the Court. Once he abuses this right, he loses the right to claim the very same relief as of right.

8. If a prisoner has not reported back to the prison after the expiry of furlough leave, he does not deserve any sympathy. Looking to the past record of the Petitioner, the order of rejection does not call for any interference. Rule discharged.