
(2019) 02 BOM CK 0110

In the Bombay High Court

Case No : Criminal Writ Petition No. 25 Of 2019

Nandu B. Lamani

APPELLANT

Vs

Inspector General Of Prisons And Ors

RESPONDENT

Date of Decision : 25-02-2019

Acts Referred:

Indian Penal Code, 1860 — Section 354, 376
Goa Children Act, 2003 — Section 8(2)

Citation : (2019) 02 BOM CK 0110

Hon'ble Judges : M.S. Sonak, J;Prithviraj K. Chavan, J

Bench : Division Bench

Advocate : T. George John, P. Faldessai

Final Decision : Disposed Off

Judgement

Prithviraj K. Chavan, J

1. Heard Mr. T. George John, learned Counsel appearing for the petitioner and Mr. P. Faldessai, learned Additional Public Prosecutor appearing for the respondents.
2. Rule. With the consent of and at the request of the learned Counsel for the parties, Rule is made returnable forthwith.
3. Mr. P. Faldessai, learned Additional Public Prosecutor waives notice on behalf for the respondents.
4. The challenge in this petition is to the order dated 23.1.2019 passed by Inspector General of Prisons, Panaji Goa rejecting the petitioner's application for furlough.
5. From the impugned order of the Inspector General of Prisons, it appears that application of the petitioner was rejected mainly on the ground that concerned Police Officer, who had conducted an inquiry, opined that since past several decades, petitioner is out of his native place. His motive or attitude during furlough/parole could be questioned of fact and, therefore, officer had not recommended

furlough request of the petitioner.

6. The nominal roll of the prisoner/petitioner reveals that he had been convicted and sentenced to undergo rigorous imprisonment for 10 years and fine of Rs.2,00,000/- and in default to undergo one year simple imprisonment for committing an offence under Section 376 of IPC read with Section 8(2) of the Goa Children Act, 2003. Inter alia he has been convicted and sentenced to 5 years of rigorous imprisonment and fine of Rs. 5,000/- and in default to undergo one month simple imprisonment for the offence punishable under Section 354 of IPC. Sentences are directed to run concurrently. It also reveals that the petitioner had not paid the fine amount and therefore, at least for now, he will have to undergo simple imprisonment for one more year.

7. It appears from the nominal roll that earlier the petitioner was granted furlough from 10.6.2017 to 30.6.2017 and from 3.2.2018 to 2.3.2018.

8. The nominal roll also reveals that the conduct of the petitioner was satisfactory in jail. In *Astaf Vs State of Rajasthan and others* (2017) 15 SCC 55 the Hon'ble Apex Court has held that the furlough is a brief release from prison. It is conditional and it is given in case of long-term imprisonment. A convict, literally speaking, must remain in jail for the period of sentence or for rest of his life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for at least some time, provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens.

9. Keeping in mind this dicta of the Hon'ble Supreme Court, we do not feel that there should be any reason to refuse the furlough to the petitioner. More particularly in the light of the fact that there are no adverse reports against him. Even from the police report which appears to have been received by Inspector General of Prisons, Panaji Goa, except a stray observation that his motive or attitude during the furlough could be a question of fact there is nothing justifying refusal of furlough. The learned Additional Public Prosecutor has also been fair enough to grant the prayer.

10. In view of the aforesaid discussions, we are satisfied that the petitioner was required to be released on furlough.

11. Accordingly, we set aside the impugned order dated 23.1.2019 passed by the respondent no.1 inter alia directing him to consider the petitioner's application for furlough on its own merits and in accordance with law.

12. Respondent nos.1 shall dispose of the furlough application as expeditiously as possible and in any case within a period of four weeks from today. Decision to be communicated to the petitioner forthwith.

13. Rule is made absolute in the aforesaid terms. There shall be no order as to

costs.

14. All concerned to act on the basis of authenticated copy of this order.