
(1987) 12 GUJ CK 0005
In the Gujarat High Court

Narsing N. Gamit

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 28-12-1987

Acts Referred:

Furlough and Parole Rules, 1959 — Rule 4, 8(6)
Penal Code, 1860 (IPC) — Section 302, 302

Citation : (1988) 2 GLR 1268

Hon'ble Judges : P.M. Chauhan, J;M.B. Shah, J

Bench : Division Bench

Judgement

M.B. Shah, J.—The petitioner was convicted for the offence punishable u/s 302 of the Indian Penal Code by the Additional Sessions Judge, Surat, on 31st July, 1984. He was entitled to have furlough on 31st July, 1986. However, the I.G., Prisons, has not granted it. Hence the petitioner filed Special Criminal Application No. 1142 of 1987. That application was disposed of by our order dated 6-11-1987 wherein we directed the I.G., Prisons, to decide the prayer of the petitioner by taking into consideration the fact that if the petitioner is released on furlough, he would stay at village Advana, taluka Porbandar, district Junagadh, and would not go to village Sandhkuva, taluka Songadh, district Surat, where the offence took place.

2. In spite of the aforesaid observation, the I.G., Prisons, has not taken into consideration the facts stated in our order and has not granted the petitioner's furlough. Mr. Mehta, learned Additional Public Prosecutor, was not in a position to point out any justifiable specific reason for not releasing the petitioner on furlough.

3. At the outset it should be noted that I.G. Prisons, should not reject the prisoner's application for releasing him on furlough solely on the ground that there is adverse police opinion.

4. The I.G. Prisons, before deciding the prisoner's application for releasing him on furlough should take into consideration the guidelines laid down under the

relevant Rules i.e. the Prisons (Bombay Furlough and Parole) Rules, 1959.

5. Firstly, if the prisoner is to be released on parole or furlough for the first time after his conviction, the I.G., Prisons, should consider the facts and circumstances and allegations against the prisoner for which he is convicted. For this purpose he should refer to the judgment and order passed by the Court convicting him. From that judgment he should try to find out whether the prisoner is hardened criminal, habitual offender or whether the offence took place all of a sudden or the offence took place because of some enmity or long standing dispute between the parties. From the aforesaid circumstances he can arrive at the conclusion that by releasing the prisoner on furlough whether the prisoner is likely to commit any offence when he is on furlough or whether there is likelihood of breach of peace during that period.

6. Secondly, he should consider the criteria laid down under Rule 4 of the Furlough and Parole Rules, 1959 particularly whether the person is a habitual offender, his conduct in the prison and whether he has shown any tendency towards crime in the prison and whether at any time he has escaped or attempted to escape from lawful custody or has defaulted in any way in surrendering himself at the appropriate time after release on parole or furlough. Under Rule 8 Sub-rule (5) if furlough is not recommended, the District Magistrate or the Commissioner of Police is required to mention adequate reasons therefore. Under Sub-rule (6) of Rule 8 the Sanctioning Authority is required to consider the said recommendation and pass an appropriate order. It does not mean that if the Authority has not recommended it without any reason or for any insufficient reason, the Sanctioning Authority i.e. the I.G. Prisons, should not release the prisoner on furlough.

7. Thirdly, he should take into consideration whether the prisoner was previously released either on furlough or parole and at that time whether he committed any offence or whether any breach of peace took place.

8. It seems that the Sanctioning Authority i.e. the I.G., Prisons, is passing orders without taking into consideration all the relevant aspects or the guidelines laid down under the Rules and is relying solely on adverse police opinion. In our view, this is absolutely improper.

9. In the result, the petition is allowed. It is ordered that the petitioner be released on his due furlough on usual terms and conditions with an added condition that the petitioner would stay at the house of Arjanbhai Khimabhai at village Advana, taluka Porbandar. district Junagadh, and would report at Bagavadar Police Station on Mondays and Thursdays between 10 11 a.m. Rule made absolute.