
(1984) 03 GUJ CK 0015
In the Gujarat High Court

Natia Jiria

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 01-03-1984

Acts Referred:

Prisons Act, 1894 — Section 59

Citation : (1984) CriLJ 936 : (1984) GLH 594 : (1984) 1 GLR 464

Hon'ble Judges : P.S. Poti, C.J;S. Majmudar, J;I.C. Batt, J

Bench : Full Bench

Judgement

P.S. Poti, C.J.—We are concerned here with a very interesting question. A Division Bench of this Court felt that what this Court had spoken on the question earlier may" call for reconsideration and appropriately therefore referred the matter to a Full Bench. That is how the matter is now before us.

2. Poverty is no crime. Even so property oriented approach in statutory provisions often results in a poor man being prized out of justice. The acuteness of extreme poverty could be best understood only by experiencing it. The plight of the impecunious in all its severity may not be fully realised even by an enlightened class engaged in statute and rule making. Whatever may be said of the legislations prior to the Constitution, in an egalitarian society where justice is promised to the poor and the rich alike, there is no scope for a law which virtually keeps out a penurious person from the benefit of the law or puts him to the penalty of a provision for reason of his impecuniousness. If an instance or illustration of this situation is necessary to convincingly project the point sought to be made out here, there could be no better case than the one now before us. A surety bond for Rs. 100/- is by any standard a nominal surety bond and one cannot think of a surety bond for any lesser sum. If there is insistence by law on the furnishing of a surety bond any compassionate and understanding authority cannot stipulate better than to require a surety bond of Rs. 100/-. But, even so there may be many in this country who will not be able to take advantage of a right to free air conferred on him to be availed of on furnishing such a surety

bond merely for the reason that he is unable to get any one to stand surety for him in a bond of Rs. 100/-. Should he forfeit his right for that reason is the question.

3. A prisoner convicted and sentenced to imprisonment in a prison is entitled to furlough in the State of Gujarat under , the Prisons (Bombay Furlough and Parole) Rules, 1959 made under clauses (5) and (28) of Section 59 of the Prisons Act, 1894. These rules made by the State of Bombay prior to the formation of the State Of Gujarat now apply to the entire State of Gujarat. R. 3 of these rules defines the accrual of the furlough to a prisoner. Detailed provisions are made in the rules how to avail of this furlough leave. In the normal course a prisoner sentenced to imprisonment for a period exceeding one year but not exceeding five is entitled to a period of two weeks' furlough at a time for every year of actual imprisonment undergone. To a prisoner who has been deprived of his personal liberty by reason of the confinement within the four walls of a prison a period of two weeks during which he could go home and associate with his wife and children is a great solace. It would be of inestimable value to him. Though no prisoner has a legal right to furlough the rules are applicable to all prisoners alike and therefore when furlough is granted to one prisoner it cannot be denied to another prisoner. To do otherwise would be an arbitrary conferment of favour on some while denying it to the others. For that very reason so long as the system of furlough is in force every prisoner who, just like his companions in the prison, earns his furlough is entitled to look forward to the period of annual two weeks at home. If his release on furlough is made dependent upon a condition which has to be complied with, but which he is unable to comply with merely for the reason of extreme and utter poverty, should he be denied the benefit of furlough? He sees those in the same prison availing of furlough, going home during that period and returning to prison after a temporary happy reunion with their families. If he is unable to get the benefit of the same furlough because of insistence on furnishing a surety bond which he is unable to furnish because he has no money and he has no one to help him with, should he be, for that reason, treated as of a different class? All assurances of equality irrespective of caste, creed, race, colour and sex would sound hollow to him if he is told that all these notwithstanding he will not have the benefit of furlough since in this vast country he is unable to find out a man who is prepared to stand surety for him for Rs. 100/-. It is not that because of his conduct and character none is willing to come forward to stand surety. He has no influence to persuade someone perhaps from his far off village to come forward and offer himself to stand surety. His wife and children anxious to have his company may also not be in a position to come forward and stand surety for him to get him released. All that would cost money and it is a stark reality that there are in this country of ours millions of people who live far far below the poverty line who cannot afford the luxury of going over to a prison and expending money, however small it may be, to stand surety after convincing the authorities that they are competent, and qualified to be sureties. What should happen to a prisoner under such circumstances?

4. Natia Jiria, prisoner No, 21385, of the District Jail, Junagadh has addressed an application to the Chief Justice complaining that he is unable to take advantage of the order passed by the Inspector General of Prisons, Gujarat State, to release him on 14 days" furlough leave since such release is made conditional on furnishing security or deposit of Rs. 100/-as required under the rules. He writes that "he is absolutely a poor man that his father is not living, that his mother is old and feeble, that his old mother maintains the family by doing labour work with his brother, and that the economic condition of the family is so weak that no member of the family had so far gone to meet him in jail". He therefore mentions that "he is not in a position to give surety of Rs. 100/- and that he may be released on furlough leave on personal bond by treating him with mercy". Evidently the reason why he was not released on his personal bond was that Rule 6 of the Prisons (Bombay Furlough and Parole) Rules 1959 (in short "the Parole Rules") and Rule 10 thereof insist on execution of a surety bond or furnishing cash security and therefore the Inspector General of Prisons is helpless. The relevant rules, Rules 6 and 10 may be set down here :

6. Furlough not to be granted without surety.-A prisoner shall not be granted furlough unless he has a relative willing to receive him while on furlough and ready to enter into a surety bond in Form A appended to these rules for such amount as may be fixed by the Sanctioning Authority.

10. Conditions of release.- The Sanctioning Authority shall grant furlough to a prisoner subject to his executing a personal bond or giving cash security in Form C appended to these rules and also subject to a surety executing a bond, in Form A appended to these rules, if so required, The release may further be subject to all or any of the following conditions :-.

(1) that the said prisoner shall reside at Taluka...in the... District/Greater Bombay during the period of release on furlough and shall not go beyond the limits of the said District/Greater Bombay without the permission of the District Magistrate.../Commissioner of Police, Greater Bombay, or such Officer as the said District Magistrate/Commissioner of Police may appoint in this behalf;

(2) that the said prisoner shall be of good behaviour and shall not commit any offence punishable by or under any law in force in India,

(3) that the said prisoner shall not associate with bad characters or lead a dissolute life,

(4) that the said prisoner shall, in case he proposes to change his religion during the period of furlough, give a minimum of seven days" prior intimation to the said District Magistrate/Commissioner of Police as also the Superintendent of the Prison from which he has been released, about such intention, and he shall also furnish them with information regarding the new religion and the new name, if any, which he proposes to adopt.

(5) that the said prisoner will surrender himself to the Superintendent of the

prison from which he was released on the expiry of the period of furlough.

(6) that the said prisoner will report once a day to the Officer-in-charge () Police Station during the period of furlough,

or

that the said prisoner shall, immediately on arrival at the place mentioned in (1) above, report at the Police Station nearest to the said place, and thereafter.

5. A Division Bench of this Court had occasion to consider a plea similar to that raised here. That was in Spl. Criminal Appln. No. 954 of 1983 decided on 20th September, 1983. In that case also the prisoner complained that he was unable to furnish surety bond or cash security. This Court noticed that Rules 6, 7 and 10 of the furlough rules applied to the case and on a combined reading of these rules it was clear that a prisoner cannot be granted furlough unless he has a relative willing to receive him while on furlough and ready to enter into a surety bond in Form A and the prisoner gives a personal bond in Form B or gives cash security in Form C appended to the rules. This Court further took the view that there was no provision in the rules which enabled the Sanctioning Authority to waive any of the above conditions. Therefore the Court felt helpless in granting the relief, It was this that prompted a subsequent Division Bench to refer the matter to a Full Bench.

6. Is it possible to understand the rules as enabling a competent authority to permit availing of furlough leave even without insistence of either cash security or a surety bond? If that is not possible, could the rule be read down so as to avoid insistence on these? If that too is not possible, could the rules be struck down as violating the right of equality? The last of these courses need be considered only if the Court is compelled to read the rules as calling for insistence on a surety bond or cash security in all cases and that rule is not capable of being read down in the manner indicated. It is always the function of the Court to construe a rule reasonably and if the provision could be upheld even by reading it down to attempt to do so rather than demolish the same by holding it as unconstitutional.

7. This country has since long awakened to the need for a considerate approach in matters where weaker sections of the society are involved so as to make the guarantee of equal opportunity a reality. Provisions of statutes and rules leaving on arena for exercise of discretion to authorities have always been understood as calling for such exercise on the part of the authorities as will render their functioning constitutional. If discretion is conferred on an authority to waive the requirements of the rules such waiver would be justified to promote the concept of constitutional protection more than anything else. Rule 6 of the furlough rules envisages the availability of a relative willing to receive the prisoner while on furlough and his readiness to enter into a surety bond in Form A for such amount as may be fixed by the Sanctioning Authority. Rule 10 contemplates execution of a personal bond by the prisoner or giving cash security in Form C and also

execution of a surety bond in Form A which is the bond referred to in Rule 6, Therefore the requirement of Rule 6 is also embodied in Rule 10. While Rule 6 refers to the readiness to enter into a surety bond in Form A Rule 10 deals with the actual furnishing of the surety bond in Form A. Therefore the two things that have to be done under Rule 10 to enable release to be ordered are (a) personal bond or cash security in Form C, and (b) surety bond in Form A. The first of these a prisoner may be able to do by executing a personal bond. Of course if in respect of a prisoner who is unable to furnish cash security the Sanctioning Authority insists upon such cash security it will be an erroneous, improper and unfair exercise by him. It will be equally unfair if, despite the circumstances eloquently speaking to the impecunious situation of the Drisoner, the Sanctioning Authority insists on proof of it, A person in prison is under a great disadvantage and particularly so if he has no friends or competent relatives to help him out. There is no reason why when he pleads his poverty and if there is no material to disbelieve his case of poverty the Sanctioning Authority should not accept it in the normal course and release him on his personal bond. In other words where the Sanctioning Authority has no reason or no materials to positively assume that the man could furnish cash security the sanctioning Authority would be obliged to release him on his personal bond. That is how Rule 10 must be understood as to the first requirement. In the case before us there is no insistence upon cash security. The prisoner has been permitted either to give cash security or personal bond. He could execute the personal bond, but what he is worried about and concerned with is the second requirement, viz. the execution of a surety bond in Form A. He has none to stand surety.

8. Rule 10, it may be noticed, qualifies the conditions under which the Sanctioning Authority is to grant furlough by the words "if so required". This is quite significant and evidently the relevance of this was not brought to the notice of the learned Judges of the Division Bench on the earlier occasion. The words "if so required" cast a duty and obligation on the Sanctioning Authority to consider whether the case requires waiver of the insistence on the execution of a surety bond. The appropriate justification for such waiver would be where, as in this case, a person is, by reason of his penury and his absence of influence in society, unable to furnish a surety bond. As Krishna Iyer, J. said, though in a different con-" text, in the context of bail, in *Moti Ram and Others Vs. State of Madhya Pradesh*, "affluents do not befriend indigents". Hence Rule 10 has to be read and understood as justifying the Sanctioning Authority in waiving the insistence upon a surety bond in cases such as that of the prisoner here.

9. In the view we take of the rule it may not be necessary to consider the validity of the rule and may not even have to read down the rule. Had we been called upon to do so we would have derived support in our attempt to a considerable extent in the following observations of Bhagwati, J., of course spoken again in a different context, in the context of bail, in *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, of the judgment the learned Judge said :

3. Now, one reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pretrial detention is our highly unsatisfactory bail system. It suffers from a property oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice. The Code of Criminal Procedure, even after its re-enactment, continues to adopt the same antiquated approach as the earlier Code enacted towards the end of the last century and where an accused is to be released on his personal bond, it insists that the bond should contain a monetary obligation requiring the accused to pay a sum of money in case he fails to appear at the trial. Moreover, as if this were not sufficient deterrent to the poor, the courts mechanically and as a matter of course insist that the accused should produce sureties who will stand bail for him and these sureties must again establish their solvency to be able to pay up the amount of the bail in case the accused fails to appear to answer the charge. This system of bails operates very harshly against the poor and it is only the non-poor who are able to take advantage of it by getting themselves released on bail. The poor find it difficult to furnish bail even without sureties because very often the amount of the bail fixed by the courts is so unrealistically excessive that in a majority of cases the poor are unable to : satisfy the police or the Magistrate about their solvency for the amount of the bail and where the bail is with sureties, as is usually the case, it becomes an almost impossible task for the poor to find persons sufficiently solvent to stand as sureties. The result is that either they are fleeced by the police and revenue officials or by touts and professional sureties and sometimes they have even to incur debts for securing their release or, being unable to obtain release, they have to remain in jail until such time as the court is able to take up their cases for trial leading to grave consequences, namely, (1) though presumed innocent, they are subjected to psychological and physical deprivations of jail life, (2) they are prevented from contributing to the preparation of their defence, and (3) they lose their job, if they have one, and are deprived of an opportunity to work to support themselves and their family members with the result that the burden of their detention almost invariably falls heavily on the innocent members of the family, It is here that the poor find our legal and judicial system oppressive and heavily weighted against them and a feeling of frustration and despair occurs upon them as they find that they are helplessly in a position of inequality with the non-poor.

10. In the result we hold that in this case there is no reason, why the petitioner should not be released on his personal bond so that he may avail of the furlough which he has earned under the rules. We direct that this be done forthwith.

Rule made absolute. No costs.