

(2003) 05 BOM CK 0007

In the Bombay High Court

Case No : Criminal W.P. No. 116 of 2003

Pandurang Gomaji Wakode

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 02-05-2003

Acts Referred:

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 4(10)

Citation : (2003) 3 MhLj 927

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : S.A. Jaiswal, for the Appellant; S. Doifode, Additional Public Prosecutor, for the Respondent

Judgement

S.T. Kharche, J.—Rule. Rule made returnable forthwith by consent of parties.

2. Heard Mr. Jaiswal, learned counsel, for the petitioner and Mr. Doifode, learned A.P.P., for the respondent/State.

3. Brief facts are as under :

This petition has been filed by the petitioner for grant of furlough. The petitioner has been convicted for the offence punishable u/s 302 of Indian Penal Code by the learned Additional Sessions Judge, Pusa, and sentenced to suffer imprisonment for life vide order dated 13-8-1993. The petitioner is undergoing the sentence at Central Prison, Amravati. The petitioner had filed an application on 18-11-2002 for grant of furlough which is rejected on 3-3-2003 by the Competent Authority/Respondent No. 3.

4. The learned counsel for the petitioner contended that the Competent Authority has committed an error in rejecting the application for grant of furlough on the sole ground that the petitioner surrendered late on earlier occasions. He contended that the petitioner's mother Hirabai Pandurang Wakode is ready to stand surety for him. The petitioner is the only major male member and Karta of the family. He contended that the petitioner, as of a right, is entitled for furlough

and, in such circumstances, the impugned order passed by the Competent Authority may kindly be set aside and the petitioner may be released on furlough.

5. The learned A.P.P. does not dispute that the petitioner is under going the sentence at Central Prison, Amravati, by virtue of his conviction recorded u/s 302 of Indian Penal Code. He contended that the petitioner had submitted an application for grant of furlough which was rejected by the Competent Authority on the basis of the report dated 12-2-2003 submitted by the District Magistrate, Yavatmal. He contended that the petitioner overstayed out of the prison on earlier five occasions when he was released on parole as well as furlough and he surrendered late. The petitioner is in the habit of overstaying out of the prison and hence his application for grant of furlough has been rightly rejected under Sub-rule (10) of Rule 4 of the Bombay Furlough and Parole Rules, 1959 (for short the Rules). He contended that the impugned order passed by the Competent Authority is perfectly right and sustainable in law.

6. I have considered the contentions canvassed by the learned counsel for both the parties. The learned A.P.P. does not dispute that the petitioner had submitted an application for grant of furlough on 18-11-2002. He also does not dispute that the petitioner has been punished by imposing penalty on him for the late surrender in the prison. He also does not dispute that the mother of the petitioner Hirabai Pandurang Wakode is ready to stand surety for the petitioner.

7. I may usefully refer Sub-rule (10) of Rule 4 of the Rules which reads as under:

"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."

8. In the instant case, the District Magistrate had submitted the report dated 12-2-2003 to the Competent Authority wherein it has been clearly mentioned that the mother of the petitioner Hirabai Pandurang Wakode is ready to stand surety for him and also she undertook that the petitioner would report back to the prison on due date after expiry of furlough leave. It has also been mentioned that the witnesses or the villagers from the village have no objection if the petitioner is released on furlough, as is reported by the Superintendent of Police, Yavatmal. What transpires from the report of the District Magistrate is that the petitioner was earlier released on parole and furlough on as many as five occasions but he surrendered late and, therefore, a conclusion was drawn by the Competent Authority that the petitioner was in the habit of surrendering late to the prison and, therefore, under Sub-rule (10) of Rule 4, rejected the application of the petitioner for grant of furlough leave.

9. It is mentioned in the order dated 3-3-2003 passed by the Competent Authority/Respondent No. 3 that the application of the applicant for grant of furlough is rejected vide Sub-rules (4), (5), (6) and (10) of Rule 4, Chapter XXXVII, of the Rules. This shows sheer non application of mind to the matter. No ground exists for the rejection of application under Sub-rules (4), (5) and (6) of

Rule 4 of the Rules. Thus, mechanical order of rejection of the application passed by the Competent Authority without application of mind is not only erroneous, unjust, illegal but also resulted in miscarriage of justice.

10. It is also not disputed by the learned A.P.P. that the total days of late surrender into the prison on earlier five occasions was to the extent of 477 days and the penalty imposed by the jail authorities for the late surrender by way of cut in remission was for 1364 days. The punishment for the late surrender was in the ratio of 1:5 days vide Sub-rule (a) of Rule 2 of the Statutory Rules made by the Inspector General of Prisons vide Notification No. MJM 1561/39466, dated 2nd July 1964. In such circumstances, when the petitioner has already been awarded punishment for late surrender, by way of cut in remission, I am of the considered view that the Competent Authority has committed an error in rejecting the application of the petitioner for grant of furlough. Therefore, it is directed that the petitioner be released on furlough for a period of two weeks from the date of his release on furnishing the valid and competent surety of his mother Hirabai Pandurang Wakode as per rules. The petitioner is directed to report back to the prison on the due date after expiry of the furlough leave. He is further directed to report his presence at police station Yavatmal (Rural) on Monday and Thursday during the period of his furlough leave between 10-00 a.m. and 5-00. p.m., in default the jail authorities are directed to apprehend and bring back the petitioner to the jail. With these directions, this writ petition is disposed of. Rule is made absolute in the above terms.