

(2008) 03 GUJ CK 0001

In the Gujarat High Court

Case No : Special Criminal Application No. 266 of 2008

Paresh @ Pappu Ranglal Chauhan

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 28-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 389(1)
Penal Code, 1860 (IPC) — Section 120, 120B, 302, 34, 341

Citation : (2008) 2 GLH 24

Hon'ble Judges : M.D. Shah, J

Bench : Single Bench

Advocate : B.A. Surti, for the Appellant; L.R. Pujari, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Mr. M.D. Shah, J.—Heard Mr. B.A. Surti for the petitioner and Mr. L.R. Pujari, A.P.P. for the respondents. Rule. Learned A.P.P. Mr. Pujari waives service of rule on behalf of the respondents.

2. By means of filing this petition under Article 226 of the Constitution of India and under the provisions of the Bombay Parole and Furlough Rules, 1959, the petitioner who is (i) undergoing life imprisonment for the offences punishable under Sections 364(A), 120B, 364, 34, 341 imposed in Sessions Case No. 99/1998, (ii) undergoing life imprisonment for the offences punishable under Sections 302, 384, 364(A), 120 of IPC and 25(1) B in Sessions Case No. 258/1997 and (iii) undergoing sentences for various offences under the IPC in other offences as well, and wherein the appeals are pending, the appeals against which are pending, has prayed approached this Court with a prayer to quash and set aside the impugned order dated 26-12-2007 at Annexure-D and the impugned order dated 25-1-2008 at Annexure-F passed by the respondent No. 2 by holding and to declare the same to be unlawful, illegal and for a direction to

the respondent No. 2 to grant furlough leave to the petitioner for a period of 15 days forthwith.

3. It is submitted by the learned Advocate Mr. B.A. Surti for the petitioner that when petitioner was on furlough leave from 8-8-2002 complaint was lodged against him in Rajasthan for the offences punishable u/s 389, IPC and he was arrested and so he could not surrender before the jail authority in time and surrendered late by 190 days. For the said late surrender, the jail authority has punished the petitioner by confiscating the amount of Rs. 4000/-, stopping canteen facilities for a period of two months and also preventing the relatives from visiting the petitioner for a period of two months. It is vehemently argued by Mr. B.A. Surti that when the petitioner is already punished for late surrender by the jail authority, then on this ground, again his application for furlough cannot be rejected. He also submitted that in other identical cases, the other petitioners were released on furlough by the jail authority and so also the petitioner is entitled to be released on furlough leave as furlough is a statutory right of the petitioner. It is also submitted by learned Advocate Mr. B.S. Surti that there was no case pending against the petitioner when he preferred furlough leave application before the Administrative Officer, Office of the Jail Inspector, Gujarat State, Ahmedabad and that authority passed an order holding that other cases of robbery and extortion of money are still pending before the trial Court which clearly shows that without application of mind order which is at Annexure-D dated 26-12-2007 is passed. It is also argued by learned Advocate Mr. Surti that I.G. Prisons, Ahmedabad, Gujarat State, Ahmedabad, by its order dated 25th January, 2008 set aside the findings of the Administrative Officer as referred to above with regard to robbery and extortion of money and held that no case is pending against the present petitioner. It is also submitted by learned Advocate Mr. Surti that in other cases in which life imprisonment was not awarded, he was released on bail by order of the Rajasthan High Court as well as by other competent Court and this fact is not considered by the competent authority and as such, the furlough leave application of the petitioner has been wrongly rejected. It is also submitted by the learned Advocate Mr. Surti that the convicts similarly situated in other cases have been released on furlough, by this High Court and hence, the present petitioner would also be entitled to the same treatment.

4. Learned A.P.P. Mr. Pujari took this Court through Rules 4 (4)(5)(6) and 10 of the Bombay Furlough and Parole Rules, 1959. According to the learned A.P.P. taking into consideration the adverse police opinion which is based On authentic information and other material on record, the order rejecting the furlough leave application of the petitioner is quite legal and proper which does not call for any interference. In support of his submission learned A.P.P. has drawn my attention to the decision rendered in the case of *Motisingh Kesirisingh v. State of Gujarat* reported in 1994(2) G.L.R.1145 wherein at para-5 of the judgment it has been observed that:

"The discretion of the High Court by virtue of extraordinary powers under Art.226 of the Constitution of India cannot be lightly exercised in matters where the authorities have quite justly and properly exercised its discretion. How to manage and regulate the jail administration is essentially and entirely a concern and look out of the jail authorities and as long as the orders passed by them are just, fair and proper, this Court has no right or business to meddle with the same and thereby in the internal affairs of the Prison administration.".

Rule 4(4)(5)(6) and 10) of the Bombay Furlough and Parole Rules, 1959 reads as under:

"4. When prisoners shall not be granted furlough.-

The following categories of prisoners shall not be considered for release on furlough:

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) Prisoners whose release is not recommended in Greater Bombay by the Commissioner of Police and elsewhere, by the District Magistrate on the ground of public peace and tranquility.

(5) Prisoners, who, in the opinion of the Superintendent of the prison show a tendency towards crime.

(6) Prisoners whose conduct is in the opinion of the Superintendent of the Prison, not satisfactory enough.

(7) xxx xxx xxx

(8) xxx xxx xxx

(9) xxx xxx xxx

(10) 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 on furlough."

5. It is pertinent to note that when the petitioner was released on furlough leave in pursuance of the order passed by the jail authority, he surrendered late by 119 days. Not only that, but during this period he committed offences u/s 379 of the Indian Penal within the jurisdiction of the Rajasthan High Court and after long time he was released in connection with the said case by an order passed by the Rajasthan High Court. It is also pertinent to note that while granting furlough, it is required to consider the gravity and seriousness of the offences for which the present petitioner is convicted. It is a hard fact that two times life imprisonment was awarded for two different cases to the petitioner and he was

also punished in connection with other offences under the provisions of the Arms Act as well as the Indian Penal Code.

6. This Court has also gone through the record of the present petitioner and it is found that there is a concrete information with the police department that the present petitioner is a habitual offender and hardened criminal and there is every likelihood of his absconding and also of engaging himself in antisocial activities if his furlough leave application is granted. It is also pertinent to note that he was involved in the cases of robbery and extortion of money, murder and other offences under the Arms Act. Merely because the sentence period is over in respect of the cases other than the cases in which he was awarded life imprisonment, the petitioner would not be entitled to be released on furlough.

7. Reliance is placed by the learned Advocate Mr. Surti on the judgment rendered in the case of Bhikabhai Devshi v. State of Gujarat & Ors. reported in 1987(2) G.L.R. 1179 wherein it has been held in para 35 of the judgment as under:

"35. In view of the aforesaid discussion, it is clear that in the context of latter part of Rule 4(1), the word "shall" will have to be read as "may" and directory. The prison authorities cannot reject as ineligible the request of due furlough of the prisoners who have surrendered late in past. The authorities have the power and duty to consider grant or refusal of such furlough due to the prisoners, having regard to the facts and circumstances of the case including the fact that the prisoner had surrendered late in past. That would be one of the relevant factors to be taken into account. Another relevant factor to be taken into account will be the view taken regarding the gravity of the offence while imposing punishment under sec.48A of the Act read with Rule 1287 of the jail Manual."

8. This Court is in complete agreement with the ratio laid down in the said decision. Reading these findings it is explicitly clear that only on the sole ground of late surrender the furlough leave application of a convict cannot be rejected, however, that was considered to be only one of the relevant factors to be taken into account. It is true that the furlough leave application of a prisoner cannot be rejected only on the sole ground of late surrender as he would already have been punished for the same. That is not so in the present case. The furlough leave application of the present petitioner is rejected not only on the ground of late surrender, but after considering the involvement of the present petitioner in serious offences like robbery and extortion of money, murder etc., the petitioner having committed offences of theft during the period of his furlough leave, adverse police opinion and the secret information received from authentic sources. This decision, therefore, would not be of any help to the petitioner. Even the decision rendered in the case of Pashabhai Jaishanker Naik v. State of Gujarat, reported in 1998(2) G.L.H. (UJ.) 10 pressed into service by learned Advocate Mr. Surti would also be of no assistance to the petitioner for the very same reason.

9. The claim for parity in respect of the present petitioner with that of similarly

situated convicts in other cases can also be not considered as the outcome of each case would depend on the facts and circumstances of that particular case.

10. Reference in this connection, may be had to the decision in the case of State of Maharashtra & Anr. v. Suresh Pandurang Darvakar reported in AIR 2006 SCW 3222. wherein it has been held by the Honourable Supreme Court in Para 9 of the judgment as under:

9. Unfortunately, the High Court does not appear to have addressed itself to these relevant aspects. It took note of the fact that nobody was willing to stand surety for release of the respondent. The High Court directed that he can be released on furnishing surety of amount lying in deposit with the jail authorities. That is not the only condition for release on furlough. There is another requirement. Even if it is held for the sake of argument that furnishing of surety of any amount lying in deposit with the jail authorities can be construed to be in compliance with the requirements of Rule 6, Rule 4(4) mandates that the prisoner who seeks to be released cannot be released if not recommended by the concerned authority on the ground of public peace and tranquility. The High Court has not recorded any finding that the "report of the District Magistrate and/or Superintendent of Police had not objected to the release on furlough on the ground of public peace and tranquility."

11. In view of the above, it is clear that a prisoner who seeks to be released cannot be released if not recommended by the concerned authority on the ground of public peace and tranquility. In the present case there is absence of recommendation by the concerned authority for the release of the present petitioner, police opinion is adverse and taking into consideration his past record and history, the order passed by the jail authority is legal and proper and does not call for any interference. Reference may also be had to the Full Bench decision rendered by this High Court in the case of LATIF CHHOTUMIYA SHAIKH v. STATE OF GUJARAT reported in 2000(3) 4 G.L.R 23 B-3 wherein it has been held as under at paras -32 and 33 of the judgment: "32. Thus, powers under the provisions contained in the Bombay (Furlough and Parole) Rules, 1959 cannot be exercised by the executive in favour of a convict undergoing sentence whose appeal is pending before the Court. The Division Bench in the case of State of Gujarat v. Jayantilal M. Patel (1995 (2) GLH 260 examined the scheme of the Bombay (Furlough and Parole) Rules, 1959 and Sec.389(I) of Criminal Procedure Code. The Division Bench following the decision of the Apex Court in case of K.M. Nanavati(supra) and agree with the views of Division Bench of Bombay High Court in case of Jayanti Veerappa Shetty v. State of Maharashtra (1985 Cr.LR (MH) 598) held that the power of grant of parole cannot be exercised by the administration where the appeals of convicts concerned are pending and such persons can be released on bail only by the Appellate Court under Sec. 389(1) of the Code of Criminal Procedure "and not by the administration."

"33. In our opinion, a convict undergoing sentence imposed by the competent

authority cannot be released on parole or furlough by High Court when an appeal arising out of the said judgment of conviction and sentence is pending."

Considering all these aspects, this application deserves to be rejected, and is accordingly rejected.