

(2019) 08 BOM CK 0126

In the Bombay High Court

Case No : Criminal Writ Petition No. 1321 Of 2019

Pintu Uttam Sonale

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Indian Penal Code, 1860 — Section 376, 376(2)(n)
Protection Of Children from Sexual Offences Act, 2012 — Section 5(J)(ii), 6
Prisons (Bombay Furlough And Parole) Rules, 1959 — Rule 4, 4(6), 4(11), 4(13),
4(18), 17

Citation : (2019) 08 BOM CK 0126

Hon'ble Judges : T.V. Nalawade, J;K.K. Sonawane, J

Bench : Division Bench

Advocate : Farheen Quraishi, R.D. Sanap

Final Decision : Dismissed

Judgement

K.K. Sonawane, J

1. Rule. Rule is made returnable forthwith. Heard finally, with consent of learned counsel for parties.

2. The petitioner - Convict No. C-10855 lodged in Nasik Road Central Prison, Nasik , preferred the present petition seeking relief to quash and set aside the impugned order rendered by the Deputy Inspector of General Prison dated 20-04-2017 as well as appellate authority i.e. Additional Deputy General of Police and Inspector General Prison, Pune, rebuffing the relief of furlough leave and to allow him to avail the furlough leave on humanitarian ground.

3. We have given anxious consideration to the arguments advanced on behalf of both sides. We have also perused the relevant documents produced on record. It is not in dispute that the petitioner was convicted for the offence punishable under Section 376(2)(n) of the Indian Penal Code (IPC) and Section 5(J)(ii) read with Section 6 of The Protection of Children from Sexual Offences (POCSO) Act,

2012.

4. Being dissatisfied with the findings of conviction, petitioner filed the Criminal Appeal No. 515 of 2016 to redress his grievances. Unfortunately, his appeal came to be turned down by this Court and the conviction and resultant sentence awarded by the learned trial Court were made confirm and absolute. The petitioner, since conviction, was put in the prison being convict of sexual offences.

5. According to the petitioner, he has been in prison since more than five years to serve out the punishment/sentence. Meanwhile, the Jail authority granted him five days parole to attend the marriage ceremony of his younger brother. After parole period, he himself surrendered to the Jail authority. Now, he is in need of furlough leave to see his family members. Therefore, he requested to allow him to avail furlough leave.

6. We have perused the impugned orders rejecting applications of petitioner for furlough leave. We do not find any error or infirmities in the orders rebuffing the relief prayed by the petitioner. The concerned Jail authorities have correctly invoked the provisions of Rule 4(6), 4(11), 4(13) and 4(18) of the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959.

7. It is to be noted that, there was notification published in Government Gazette on 26-08-2016 for amendment in the Rules of 1959. The Rule 4 of Amendment Rules, 2016, postulates two classification of the prisoners, one is the prisoner, who are eligible to apply for furlough leave and another is not permissible to avail furlough benefit. This Court in various judicial precedents delineated that the prisoners can not claim the benefit of furlough leave as a matter of right. The Rule 17 contemplates that "nothing in these rules shall be construed as conferring a legal right on a prisoner to claim release on furlough."

8. Admittedly, the petitioner has no legal right to claim the furlough leave. Moreover, he is the convict of sexual offence punishable under Section 376(2)(n) of IPC as well as under POCSO Act, 2012. In view of the notification dated 26-08-2016, the petitioner is not eligible for release on furlough. It is profitable to make a reference of order passed by this Court (Coram : T. V. Nalawade and Mangesh S. Patil, JJ.) in Criminal Writ Petition No. 237 of 2019 (Atmaram S/o. Deivan Mundhe Versus The State of Maharashtra and others) dated 20th March, 2019, in which, this Court elucidated the provisions relating to furlough. It has been laid down that under the Rules, 1959 and its subsequent amendment made time and again uptill year 2016, the furlough benefit cannot be considered as an legal right accrued in favour of prisoner. This Court, in the aforesaid Writ Petition, considered the various decisions relating to entitlement of prisoner to release on furlough. Eventually, it has been held that the prisoner, who has been convicted for the offence under Section 376 of IPC is not entitled for furlough leave. He cannot claim furlough leave as an legal right. It is for the State Government to consider the same within ambit of relevant provisions of law. It would be reiterated that the Government of Maharashtra issued the notification dated

26-08-2016 and refused to exercise powers to grant furlough to the prisoners convicted for the offence of rape. Therefore, there is no propriety to cause any interference in the impugned orders passed by the concerned Jail authority for rejecting the application of the petitioner to release him on furlough.

9. In the above premises, the petition being devoid of merit deserves to be dismissed. Accordingly, Writ Petition stands dismissed. No order as to cost. Rule is hereby discharged. The fees of appointed counsel is quantified @ Rs.3,000/- (Rs. Three Thousand Only) to be paid through the High Court Legal Services Authority, Sub-Committee, Aurangabad.