
(2016) 09 BOM CK 0153

In the Bombay High Court

Case No : Criminal Writ Petition No. 990 of 2016

Rajaram

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Prisons Act, 1894 — Section 59

Citation : (2017) ALLMRCri 1214

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mrs. B.B. Gunjal, Advocate (Appointed), for the Petitioner; Mr. D.R. Kale, APP, for the Respondent/State

Final Decision : Disposed Off

Judgement

S.S. Shinde, J.—Heard. Rule. Rule made returnable forthwith and heard finally with the consent of the parties.

2. This Petition takes exception to the letter/order dated 24.05.2016 issued by respondent no.2. The petitioner further seeks direction to respondent no.2 to release the petitioner on furlough leave on his personal bond.

3. The petitioner is undergoing the sentence of the life imprisonment in Central Prison at Aurangabad. He applied for furlough on 05.05.2016 before respondent no.2. Respondent no.3 sent an adverse report to respondent no.2 on 13.05.2016, mentioning therein that nobody is ready to stand as surety to the petitioner. Respondent no.2 rejected the application of the petitioner for grant of furlough. Hence this Petition.

4. The learned counsel appearing for the petitioner submits that when the convict is not able to furnish surety, the authority has discretion to release him on executing personal bond. In support of the said contention, learned counsel placed reliance on the reported judgment in the case of Dipak Sudhakar Wakelekar v. State of Maharashtra and ors., 2011 Cri.L.J.3263 and Natia Jiria v.

State of Gujarat and others, 1984 Cri.L.J.936.

5. On the other hand, the learned APP appearing for the respondent - State submits that the Authority has discretion to consider the prayer to release the convict undergoing the sentence in Open Prison on furlough on executing personal bond, however, not in the case of the convicts, who are undergoing imprisonment in the Prisons other than Open Prison.

6. We have considered the submissions of the learned counsel appearing for the petitioner and the learned APP appearing for the respondent - State. It is not in dispute that since the year 2011 the petitioner is undergoing imprisonment and he is entitled to be released on furlough.

7. The Division Bench of the Bombay High Court at Nagpur in the case of Bhimrao Nathuji Bhoyar v. Superintendent, Amravati Central Prison, Amravati, 2003 (1) Mh.L.J. 567 keeping in view the facts of that case directed respondent authorities to release the petitioner therein on furlough on his executing a personal bond without insisting for furnishing surety relying upon the Full Bench decision of the Gujarat High Court in the case of Natia Jiria v. State of Gujarat and others (cited supra). It is true that in that case though the order was passed by the Competent Authority on 5 occasions to release the petitioner on furlough, he could not avail of the same due to his inability to furnish surety. However, the fact remains that the petitioner therein was undergoing sentence in Central Prison, Amravati. Therefore, we are of the opinion that the case of the petitioner herein deserves to be considered afresh by respondent no.2. In the circumstances, the impugned letter/order dated 24.05.2016 stands quashed and set aside. Respondent no.2 is directed to reconsider the request of the petitioner to release him on furlough on his executing personal bond only without surety, as expeditiously as possible, however, within 8 weeks from today.

8. Rule is made absolute in above terms. Criminal Writ Petition stands disposed of accordingly.

9. Since, Mrs. B.B. Gunjal, the learned counsel is appointed as amicus curie to prosecute the cause of the petitioner, her fees be paid as per the schedule of fees maintained by the High Court Legal Services Sub-Committee,