
(2014) 09 BOM CK 0132

In the Bombay High Court

Case No : Criminal Writ Petition No. 24 of 2013

Raju Bihari

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 01-09-2014

Acts Referred:

Citation : (2015) ALLMR(Cri) 979 : (2016) 1 BomCR(Cri) 219

Hon'ble Judges : B.P. Dharmadhikari, J;A.S. Gadkari, J

Bench : Division Bench

Advocate : John Abrue Lobo, Advocate for the Appellant; Mahesh Amonkar, Advocate, Addl. Public Prosecutor, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

B.P. Dharmadhikari, J.—The prisoner Raju Bihari, has approached this Court with a grievance that as immediate steps are not taken on request for furlough and parole, the occasion lapses and legal right of prisoner is defeated.

2. Learned Advocate Shri John Lobo, (appointed under the Legal Aid Services) argues that though furlough may not technically lapse, in case of exigencies like serious illness or death in the family, if parole application is not granted immediately, the occasion is over and the Petitioner therefore cannot attend to any ailment of the relative or the funeral, etc. Learned Counsel has taken the Court through relevant provisions and submitted that this Court must therefore intervene and lay down a time limit. He further submits that earlier time limit of eight weeks granted by this Court is being used to the prejudice of prisoners. According to him, when reports are called for from concerned Police Station and those reports are not received, as decision on such application cannot be taken within eight weeks, the applications are rejected. Learned Counsel has taken support of the Order dated 04.03.2009, passed at Bombay in Criminal Writ Petition no. 2417 of 2008.

3. Shri Amonkar, learned Addl. Public Prosecutor appearing for the Respondents,

makes a statement that in case real exigencies like death, immediately the prisoner is released with escort and he is permitted to attend the funeral or even to look after ailing relative. He further points out that to avoid the absconding of such prisoners released on parole or furlough, as a matter of policy, after release, they are asked to confine themselves to a particular area and by taking escort, they are handed over to a local Police Station. He further submits that availability of railway tickets or the tickets of any public transport at times creates problem and hence the State Government has made request to railways and other authorities for providing a quota to meet such contingencies. According to him, eight weeks time granted is sufficient and it takes care of interest of prisoner as also the State Government. He, therefore, prays for dismissal of the Criminal Writ Petition.

4. In reply, learned Advocate for the Petitioner submits that when railway tickets are not available, the prisoner who is sanctioned leave is made to wait till railway tickets become available for his escort and then they proceed to the destination. According to him, therefore, even after formal release, the prisoner cannot enjoy his liberty and continues in custody till he is released at the place of concerned local Police Station. He further points out that travel charges of escort were also being recovered from the prisoner.

5. Learned Addl. Public Prosecutor, has clarified that the charges towards travel of escort are borne by the State Government only.

6. We have perused the relevant provisions. In so far as grievance of furlough is concerned, furlough is a legal right and that leave is earned by prisoner after putting a requisite number of days in prison. As such, whenever he completes the requisite number of days, his entitlement for release on furlough accrues. This furlough cannot be extinguished and wiped out merely because the escort is not available. However, efforts should be made by the State Government to see that release of prisoner who is entitled to furlough is not unnecessarily delayed because of non-availability of furlough. Journey can be arranged by other modes also. As this issue involves making of policy in this respect, we direct the State Government to suitably apply its mind and take appropriate decision within a period of eight weeks from today.

7. In so far as grant of parole is concerned, the statement made by the learned Addl. Public Prosecutor sufficiently redresses the grievance of the Petitioner. A perusal of Rule 326 of the Goa Prisons Rules, shows authorities competent to sanction parole. The said Rule contemplates State Government to be such authority in four contingencies specified in sub-rule (1). In other words, it is the Superintendent who is competent authority to sanction release of a convicted prisoner on parole upto maximum period of 14 days. Perusal of Rule 327 shows procedure to be followed for dealing with such applications. Sub-rule (1) of Rule 327 shows that in case referred to sub-rule (1) of Rule 326 i.e. where State Government is competent authority, the Superintendent of Jail has to endorse his remarks upon application and submit it to the Government along with the

nominal roll of the prisoner and the other to Director General of Police of the State, under intimation to the Inspector General. In cases referred to in sub-rule(2) of Rule 326, the Superintendent has to endorse the remarks thereupon and submit one copy to Inspector General along with the nominal roll of the prisoner and the other to the Director General of Police of the State. In case the application for parole falls under sub-rule (3) of Rule 327, said Superintendent has to put his remarks and submit one copy to the Inspector General for his information and the other to the Director General of Police. This Rule shows that ultimately Director General of Police of State has to make inquiries to ascertain whether ground or grounds on which parole is sought are genuine or not. Thus, decision is required to be taken by Director General of Police. Here it is pointed out to Court that decision is normally being taken by Inspector General of Police.

8. Thus, provisions of Rules itself permit grant of parole upto maximum period of 14 days by Superintendent. However, no express procedure therefore like verification of grounds or genuineness appears to be prescribed. In case there is pressing emergency and prisoner is required to be released forthwith, it is apparent that first authority which can take this decision is concerned Superintendent. Therefore, Rule 326(2) provides that upto 14 days, said authority can grant parole. The statement made by learned Addl. Public Prosecutor that in appropriate cases the prisoner is released on parole immediately, therefore, cannot be doubted. However, it is apparent that the said Superintendent has in suitable cases to find out whether ground given to him is genuine or not and for that purpose contact concerned Police Station, gather information and then take suitable decision in case of parole. In case of grant of parole on the ground of death, perhaps non-availability of escort by itself may not come in the way of the prisoner in attending funeral but again the State Government has to take suitable decision which would be applicable on uniform basis in such cases.

9. We, therefore, find that this issue can also be resolved by directing the State Government to find out the procedure to be followed by the Superintendent of Jail. The said decision shall also answers a query whether the actual furlough leave of such prisoner shall commence from the date on which he is released/freed in the area of concerned Police Station. The decision in this respect should be reached within a period of eight weeks.

10. With these directions and liberty to the Petitioner to approach again if his grievance subsists we, therefore, partly allow the Criminal Writ Petition and dispose of the same.

11. Fees/charges of the learned Counsel appointed under the Goa State Legal Aid Services, are quantified at Rs.10,000/-.