

(2017) 06 BOM CK 0109
In the Bombay High Court
Case No : 49 of 2017

Ranjit

APPELLANT

Vs

State of Maharashtra & Ors.

RESPONDENT

Date of Decision : 06-06-2017

Acts Referred:

Citation : (2017) 06 BOM CK 0109

Hon'ble Judges : Prasanna B. Varale, Murlidhar G. Giratkar

Bench : DIVISION BENCH

Advocate : R.D. Hajare, N.R. Tripathy

Judgement

1. Rule. Rule is returnable forthwith. Heard finally by consent.
2. Being aggrieved by the order passed by the respondent no.1 authority seeking indulgence in the order passed on 05.10.2016 for relaxing condition no.1 on the ground that the petitioner/convict was not in a position to submit cash surety due to poverty, the petitioner is before this Court.
3. Perusal of the record shows that the petitioner had applied to the respondent no.1 for grant of furlough leave. The police report was in favour of the petitioner. Though, order dated 05.10.2016 was passed in favour of the petitioner, condition no.1 contained therein, namely the petitioner shall furnish personal surety bond of Rs.5,000/- and other surety, was the subject matter of the application. The petitioner had submitted before the respondent no.1 that his wife Smt. Shashikalabai is ready to stand surety and being poor person, neither the petitioner nor the other members of his family are having any property either immovable or otherwise. The petitioner, therefore, requested the respondent no.1 to accept undertaking of his wife, who is ready to stand surety for him. The respondent no.1 found no favour with the petitioner and rejected the application.
4. The reply filed by the State reveals that the only ground raised to oppose the petition is the earlier negative police report of the petitioner. The material placed on record shows that the subsequent report, which was in favour of the

petitioner, was not considered by the respondent no.1. It is specifically stated in the report that wife of the petitioner is ready to stand surety and the financial condition of the petitioner is poor. These facts are reflected in the report submitted to the Prison Authority, dated 20.8.2016.

5. Mr. Hajare, learned counsel for the petitioner, by placing heavy reliance on the judgment of this Court reported in 2012 (2) Bom.C.R. (Cri.) 219 in the case of Anil Vishwanath Pathawe v. D.I.G. Prison and another, submitted that the respondent authority has committed a serious error in rejecting the application seeking modification of condition. In Anil Pathawe's case also an objection was raised that on earlier occasion the petitioner therein had reported to the Prison authorities belatedly and the Division Bench of this Court was pleased to observe at paragraphs 8, 9 and 13 thus - 8. After having gone through the documents on record and the rival submissions, it is not in dispute that the Appropriate Authority has had ordered release of the petitioner on furlough leave vide order dated 10th July, 2008 on condition of furnishing cash security and surety. As the petitioner was not in a position to comply with the condition, he filed Writ Petition in this Court, being Criminal Writ Petition No. 2581 of 2008. The said Writ Petition was disposed of on 2nd February, 2009 by directing release of petitioner on furnishing surety of personal bond of Rs.10,000/- and surety in the like amount by two persons. However, the petitioner was not in a position to even fulfil this stipulation. Accordingly, the petitioner has again approached this Court by way of this Letter Petition through jail, praying for relaxation of requirement of furnishing two sureties and instead accepted cash surety of Rs.5,000/-. Indeed, the respondents, relying on Rule 6 of the said Rules, may be justified in contending that furnishing surety as condition for release on furlough is indispensable. 9. However, the learned amicus curiae has invited our attention to the exposition of the Full Bench of Gujarat High Court, which had occasion to interpret this very rule. The Full Bench of the Gujarat High Court in Natia Jiria's case has opined that the requirement of Rule 6 is also embodied in Rule 10. Rule 10 bestows discretion in the Sanctioning Authority to grant furlough to prisoner, subject to his executing a personal bond or giving cash security in Form C appended to the said Rules and also subject to a surety executing a bond in Form A appended to the said Rules, if so required. This has been construed to mean that two things that have to be done under Rule 10 to enable release to be ordered are (a) personal bond or cash security in Form C and (b) surety bond in Form A. It is held that the former requirement can be fulfilled by the prisoner by executing a personal bond, but, in respect of a prisoner, who is expected to furnish cash security, the Sanctioning Authority insists upon such cash security, it will be an erroneous, improper and unfair exercise by it. It went on to observe that it will be equally unfair if, despite the circumstances eloquently speaking to the impecunious situation of the prisoner, the Sanctioning Authority insists on proof of it. It held that the person in prison is under a great disadvantage, and particularly so, if he has no friends or competent relatives to help him out. It went on to observe that in that case there is no reason why when the prisoner

pleads his poverty, and if there is no material to disbelieve his case of poverty, the Sanctioning Authority should not accept it in the normal course and release him on his personal bond. The Court went to the extent of observing that the words occurring in Rule 10 "if so required" cast a duty and obligation on the Sanctioning Authority to consider whether the case requires waiver of the insistence of the execution of a surety bond. Further, the appropriate justification for such waiver would be where a person is, by reason of his penury and his absence of influence in society, unable to furnish a surety bond.

13. As aforesaid, the learned amicus curiae has invited our attention to couple of orders passed by learned Single Judges as well as the Division Benches of this Court where the Court itself directed release of the concerned prisoners. We are not inclined to follow that course. In our considered opinion, it is for the Sanctioning Authority to record satisfaction on material aspects, and in particular, on issues noted by us hitherto.

The above referred judgment in Anil Pathwe's case is squarely applicable to the fact situation of the present matter.

6. In view of above, the order impugned in the present petition is set aside. The respondent authorities are directed to consider the case of the petitioner afresh for his release on furlough leave in view of the observations of this Court in Anil Pathawe's case (supra). The respondent authorities are directed to take necessary decision as expeditiously as possible. The criminal writ petition is allowed and disposed of in the aforesaid terms. The fees of the learned counsel appointed for the petitioner is quantified at Rs.1,500/- (Rupees One thousand Five hundred only).

Petition allowed.