
(2013) 10 BOM CK 0016
In the Bombay High Court
Case No : Criminal Writ Petition No. 89 of 2013

Riyaz Shaikh

APPELLANT

Vs

State of Goa and Others

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 6 ABR 597 : (2014) ALLMR(Cri) 855

Hon'ble Judges : R.M. Savant, J

Bench : Single Bench

Advocate : Auro De Oliveria, for the Appellant; S.R. Rivankar, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

R.M. Savant, J.—Rule, with the consent of the learned counsel for the petitioner and the Learned Public Prosecutor made returnable forthwith and heard. The writ jurisdiction of this Court under Article 227 of the Constitution of India is invoked against the order dated 4/1/2013 passed by the Inspector General of Prisons by which order, the application for furlough filed by the petitioner came to be rejected. The petitioner also challenges the Memorandum dated 17/4/2013 issued by the respondent No. 1, by which Memorandum the said order dated 4/1/2013 is maintained, on account of the negative police report and unsatisfactory conduct of the petitioner in jail, as reported by the Superintendent of Central Jail, Aguada.

2. The petitioner herein has been convicted for the offences under Sections 376 and 506 Part II of the I.P.C. and sentenced to 7 years rigorous imprisonment and to pay compensation of Rs. 25,000/- to the victim. The petitioner is presently incarcerated in Central Jail, Aguada. The petitioner as on date has been in jail for a period of 3 years, 3 months, 5 days as on 28/08/2013.

3. The above petition had come up for admission on 22/8/2013 on which date a statement was made by the Learned Counsel appearing on behalf of the

Petitioner to the effect that if the police have objection for the petitioner residing at Salcete, the petitioner would file an affidavit mentioning some other place of his relative where the petitioner would not come into contact with the victim girl. The said fact was therefore directed to be placed on affidavit by a learned single Judge of this Court by an order passed on the said day. Furlough is sought on the ground that the petitioner wants to spend some time with his wife and children and to re-establish contact with the society. The application was also founded on the fact that his son Ashish has met with an accident and is undergoing treatment.

4. In terms of the order dated 22/8/2013, two Affidavits have been filed by one Hanumanth Natikar, R/O H. No. 1018/1, Around Darga, Zuari, Sancoala, Mormugao, South Goa, 403 710 in the Affidavit dated 28/8/2013 and Affidavit dated 04/10/2013. The sum and substance of the said Affidavits is that the petitioner's wife is the cousin of the applicant and that the affiant would not allow the petitioner to stay at his residence at Margao Salcete Goa during his furlough period of 21 days and his wife's residence at Maina Curtorim Salcete Goa and would see that the petitioner would avoid contact with the victim girl. It has further been stated in the said Affidavit that the affiant would monitor the petitioner during his stay on furlough for 21 days at his residence and would see that the petitioner will abide by all the furlough conditions and surrender back to prison after the expiry of 21 days.

5. After the first Affidavit was filed by the said Hanumath Natikar on 28/8/2013, the police have gone and carried out verification in respect of the facts stated in the said Affidavit. The Police Inspector, Verna Police Station has accordingly addressed communication dated 30/9/2013 to the Addl. Inspector General of Prisons, Central Jail Aguada, Goa. In the said letter it is mentioned that the said Hanumath Natikar has been residing at the address given in the Affidavit since birth. It is further stated that from the inquiry it is revealed that the petitioner has been residing at Margao and the address given by the petitioner at which he would be staying is of Zarint, Zuarinagar. The letter also speaks of the credentials of said Hanumanth Natikar and it has been stated in the letter that nothing adverse is proved against the said Hanumanth Natikar and that he is not having any criminal background. Hence, the said letter dated 30/9/2013 indicates that the police have carried out the necessary investigation and verification as regards the place and the person with whom the petitioner would be staying during the furlough period.

6. Having regard to the aforesaid, the above Criminal Writ Petition is required to be allowed and accordingly allowed. Resultantly the orders dated 4/1/2013 and the Memorandum dated 17/4/2013 are hereby quashed and set aside. The furlough application filed by the petitioner is allowed on the following terms and conditions: (i) The petitioner is released on furlough for a period of 21 days. The petitioner to execute a Personal Bond in the sum of Rs. 25,000/-. The petitioner also to give the surety of Shri Hanumanth Natikar who would execute a Bond in

Form-I of The Goa Prison Rules, 2006.

(ii) The petitioner shall reside with Shri Hanumanth Natikar at Zarint, Zuarinagar during the period of furlough and would not leave the said place.

(iii) The petitioner to report to the local police station having jurisdiction over the place, of his stay i.e. Zuarinagar i.e. Verna Police Station every day at 5 p.m.

(iv) That the petitioner will surrender himself back to the Superintendent of Sub Jail, Sada on the expiry of period of furlough.

(v) That the petitioner during the period of furlough shall conduct himself in a good and proper manner and see to it that he does not commit any offence during the period of furlough.

Rule is accordingly made absolute in the aforesaid terms.