

(2003) 10 BOM CK 0048
In the Bombay High Court
Case No : Criminal W.P. No. 284 of 2003

Sanjay Kisan Kadse

APPELLANT

Vs

State of Maharashtra and others

RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Citation : (2004) 1 MhLj 789

Hon'ble Judges : P.S. Brahme, J;D.D. Sinha, J

Bench : Division Bench

Advocate : S.A. Jaiswal, for the Appellant; A.S. Sonare, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—Rule returnable forthwith. Heard finally by consent of Shri Jaiswal, learned Counsel for the petitioner and Shri Sonare, learned Additional Public Prosecutor for the respondents.

2. Shri Jaiswal, learned Counsel for the petitioner, states that the petitioner is undergoing sentence of life imprisonment in the Central Prison, Amravati. The petitioner applied for furlough leave to the competent Authority and same is rejected vide order dated 5-7-2003 on the basis of adverse Police report. It is contended that adverse Police report is simply based on the statements of the persons, who were examined by the prosecution as prosecution witnesses in the criminal trial of the petitioner. It is further contended that this cannot be a ground for rejecting the furlough leave application and the order of rejection of furlough leave application passed by the competent Authority is not sustainable in law as the contingencies, which are required to be considered while deciding the furlough leave application are mentioned in Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959. It is, therefore, contended that petitioner be released on furlough leave.

3. Shri Sonare, learned Additional Public Prosecutor for the respondents, does

not dispute the factual aspect of the matter and states that during the course of Police enquiry, statements of Jayant Jaisingpure, Smt. Vithabai Singsarve, Smt. Sandhya Chavan and Smt. Sangeeta Jaisingpure, who were examined by the prosecution as prosecution witnesses in the trial of the petitioner, were recorded. It is contended that all these witnesses are related to each other and have expressed in their respective statements the apprehension that if petitioner is released on furlough leave, there is a likelihood of danger to their lives and properties. It is further contended that Police has, therefore, submitted an adverse Police report to the competent Authority and the Competent Authority on the basis of the said adverse Police report, rejected the application of the petitioner for furlough leave.

4. We have considered the contentions canvassed by the learned respective Counsel for the parties. The Competent Authority while considering the application for furlough leave is required to pass an order keeping in view the contingencies mentioned in Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959. In Rule 4, circumstances are enumerated when competent Authority can refuse furlough leave. It is no doubt true that sub-rule (4) contemplates that prisoner whose release is not recommended in Greater Bombay by the Commissioner of Police and elsewhere by the District Magistrate on the ground of public peace and tranquility, shall not be granted furlough leave. This ground must find place in the Police report and competent Authority must be satisfied on the basis of such ground mentioned in the Police report that if prisoner is released on furlough leave, that would create problem so far as public peace and tranquility is concerned. It is also true that if persons, who have been examined by the prosecution as prosecution witnesses in the trial, express apprehension that if prisoner is released on furlough leave, their lives and properties would be in danger, the competent Authority, in such situation, is required to assess as to whether the conflict which is likely to occur between these witnesses and the prisoner, if he is released on furlough, would result in causing breach of public peace and tranquility on the basis of facts and circumstances involved. Mere opposition to release of the prisoner by the witnesses on the ground of likelihood of harm simpliciter would not be sufficient to deny furlough leave to the prisoner.

5. This Court is entitled to consider and assess the situation independently. If this Court, after taking into consideration the facts and circumstances involved, is of the view that if a prisoner is released on furlough leave, an untoward incident is likely to happen, which ultimately may result in breach of public peace and tranquility, then this Court would be justified in rejecting the prayer for grant of furlough leave. However, it would be proper that the competent Authority should take into consideration all these factors and it is only thereafter, required to pass appropriate orders in such matters.

6. It is unfortunate that in many matters, the competent Authorities have passed orders rejecting applications of prisoners for furlough leave on the grounds which are non est. This court as well as other High Courts from time to time have

issued various directions in this regard and also categorically observed about the material, which would be required to be considered by the competent Authorities while considering the applications for grant or refusal of furlough leave. Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 clearly denotes contingencies in which furlough leave of the prisoner can be refused. Similarly, the competent Authorities are also required to consider the law laid down by the High Courts and the Apex Court in this regard and after such consideration, the competent Authorities are expected to pass orders one way or the other, which are sustainable in law.

7. Similarly, in many matters, it is noticed by us that the orders passed by the competent Authorities rejecting the applications for furlough leave are in a very casual manner completely ignoring the provisions of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 and, therefore, the orders demonstrated total non-application of mind on the part of the competent Authorities and rendered them invalid in law. In many matters, the competent Authorities rejected the applications for furlough leave in the routine manner only on the basis of adverse Police reports, which are submitted on the basis of statements of witnesses of the opposite side and, therefore, as we have already observed hereinabove, such orders cannot be sustained. The competent Authorities, who are entrusted with the powers of grant or refusal of furlough leave, which is the right of the prisoner, are expected to apply their mind to the facts and circumstances of the case keeping in view the contingencies mentioned in Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 and only thereafter, should express their opinion in this regard. Similarly, mere observations in the Police report that there is a likelihood of breach of peace if prisoner is released on furlough leave should not be the formal expression only to deprive the prisoner from availing the furlough leave. The Police Authorities should be in a position to substantiate their opinion by giving valid reasons for the same. We expect that in future all these factors will be kept in mind by the competent Authorities while considering the applications for grant or refusal of furlough leave.

8. In the instant case, the only ground on the basis of which the furlough leave of the petitioner is refused is the adverse Police report based on the statements of the prosecution witnesses and there is nothing on record to show that if petitioner is released on furlough leave, there is a likelihood of conflict between petitioner and witnesses and threat to the peace and tranquility in the area. Therefore, we are of the considered view that the ground on which furlough leave is refused to the petitioner by the competent Authority, is not proper and the order of rejection dated 5-7-2003 passed by the competent Authority is not sustainable in law. Hence, we pass the following order :

The petitioner be released on furlough leave for a period of fifteen days from the date of release as per rules. The petitioner is directed to visit Police Station, Paratwada twice a week during his stay at Paratwada and surrender before Jail

Authorities on or before completion of period of fifteen days. If petitioner fails to surrender as directed, the Jail Authorities are directed to take appropriate steps forthwith to apprehend him.

A copy of this judgment be forwarded to the Home Department of State of Maharashtra. The Principal Secretary, Home Department is directed to circulate this judgment to all the concerned Authorities.

9. The rule is made absolute in the above terms.