

(2003) 04 BOM CK 0016
In the Bombay High Court
Case No : Criminal W.P. No. 120 of 2003

Santosh Bhagwandin Bachharaj	Vs	APPELLANT
Superintendent, Central Prison		RESPONDENT

Date of Decision : 19-04-2003

Acts Referred:

Prisons (Bombay Furlough and Parole) Rules, 1959 — Rule 4(10)

Citation : (2003) 4 MhLj 349

Hon'ble Judges : S.T. Kharche, J

Bench : Single Bench

Advocate : S.P. Deshpande, for the Appellant; Mandpe, A.P.P, for the Respondent

Final Decision : Allowed

Judgement

S.T. Kharche, J.—Rule. Rule returnable forthwith and heard by consent of the parties.

2. The learned Counsel for the applicant/accused contended that the accused has been convicted of the offence punishable u/s 302 of Indian Penal Code, by the learned Additional Sessions Judge, Yavatmal on 9th July, 1997 and he was sentenced to undergo imprisonment for life. She contended that the applicant/accused, being aggrieved by the order of conviction and sentence, had preferred an appeal bearing Criminal Appeal No. 318/1997, in this Court, which came to be dismissed on 19th July, 2002. She further contended that the accused is undergoing the sentence at the Central Prison, Amravati.

3. She further contended that the applicant/accused had made an application for grant of furlough on 18-10-2002 to the Competent Authority through prison. That application was rejected by the Competent Authority by the order dated 27-2-2003.

4. The learned Counsel for the applicant further contended that on earlier occasions, the applicant/accused had availed furlough leave, but he was unable to report back to the prison in time and hence the prison authority awarded him

punishment by way of deduction in remission and, therefore, for the same reason, now, the Competent Authority has rejected the application for grant of furlough leave, which is not sustainable in law. She contended that in the circumstances, the applicant/accused may kindly be granted furlough leave.

5. The learned A.P.P. contended that the applicant/accused did not report back to the prison authority on earlier two occasions. He contended that the accused was granted parole leave on first occasion on 19-11-1997, but he surrendered late by one day. Then, on 2nd occasion, i.e. on 26-12-1998, the applicant was granted furlough leave and after the expiry of the period of furlough leave, he did not surrender in time and he was late in surrendering by three days. Thereafter, the applicant/accused was again granted furlough leave on 22-3-2001 and he did not surrender after the expiry of the period of furlough leave and there was delay of about 101 days in surrendering to the prison. He contended that the applicant/accused, therefore, was punished and the remission in the ratio of 1 x 5, i.e. $105 \times 5 = 525$ days has been deducted. He contended that the Competent Authority rightly rejected the application of the applicant for grant of furlough leave on the ground that he is in the habit of surrendering late to the prison and, therefore, his application for grant of furlough leave may kindly be rejected.

6. I have given thoughtful consideration to the contentions canvassed by the learned Counsel for both the parties. The Competent Authority by order dated 24-2-2003 rejected the application for grant of furlough leave on the ground that the applicant is in the habit of surrendering late to the prison, as per the report submitted by the District Magistrate, Yavatmal. It is also mentioned in the order that the application has been rejected as per the provision contained in Sub-rule (10) of Rule 4 of Chapter 37 of The Prisons (Bombay Furlough and Parole) Rules, 1959. Sub-rule (10) of Rule 4 contemplates that the following categories of prisoners shall not be considered for release on furlough :

"(1) to (9).....

(10) Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough. "

7. It is settled law that all the prisoners, as of right, are entitled to furlough leave on furnishing the appropriate and competent surety. The wording of Sub-rule (10) of Rule 4 cannot be interpreted to mean that the prisoners could be awarded punishments for surrendering late and also they could be punished for not granting furlough leave on that count. It is true that in the present case, the applicant/accused, on earlier three occasions, had surrendered late to the prison. It is not disputed by the learned A.P.P. that the punishment has been imposed on the applicant/accused for surrendering late to the prison. It is also not disputed that total days of late surrender by the applicant to the prison were of 105 days and, therefore, total $105 \times 5 = 525$ days have been deducted from the remission earned by the applicant/accused. This punishment has been imposed as per the

provision contained in Sub-rule (a) of Rule 2 of Statutory Rules made by the Inspector General of Prisons on 2nd July, 1964, vide Notification No. MJM 1561/39466, dated 2nd July, 1964 in exercise of the powers conferred by Sub-section (1) of Section 11 of the Prisons Act, 1894 (IX of 1894).

8. It is also pertinent to note that In-charge Superintendent of Police, Yavatmal had submitted his report dated 25-12-2002 to the prison authorities, wherein he had made a favourable report and clearly mentioned that he has no objection for grant of furlough leave to the applicant/accused, it is further mentioned in that report that the father of the applicant, by name, Bhagwanddin Mohanlal Bachharaj, Aged : 65 yrs., r/o Yavatmal is ready to stand as surety for the applicant/accused. The report does not indicate that the antecedents of the applicant/accused are not good or that in case he is released on furlough leave, he is likely to commit the breach of peace.

9. The District Magistrate, Yavatmal, on considering that report dated 25-12-2002 of the In-charge Superintendent of Police, Yavatmal, and also after verifying the deduction of remission on earlier occasions, did not recommend for grant of furlough leave to the applicant/accused. The Competent Authority found that the District Magistrate did not recommend for grant of furlough and, therefore, has rejected the application of the applicant for grant of furlough leave by the order dated 24-2-2003. In the circumstances, it is obvious that the impugned order passed by the Competent Authority is erroneous because the prison authority cannot reject as ineligible request of due furlough of the prisoners, who have surrendered late in the past especially when the punishment has been imposed on them as per the Rules by way of deducting the days in the ratio of 1 x 5 from the remission earned. Thus, the impugned order passed by the Competent Authority cannot be sustained, and I am of the considered view that the applicant/accused is entitled for grant of furlough leave. Therefore, the impugned order is set aside.

10. In the result, I direct that the prison authority shall release the applicant/accused on furlough leave for the period of two weeks from the date of his release, on furnishing a valid and competent surety of his father by name, Bhagwanddin Mohanlal Bachharaj, Age : 65 Yrs. R/o Yavatmal, with further direction to the applicant/accused that he shall report back to the prison after expiry of the period of furlough leave and in case of default, the prison authority shall apprehend him and brought him back to the prison. The Criminal Writ Petition is allowed and the Rule is made absolute in the aforesaid terms.