
(2003) 03 BOM CK 0018
In the Bombay High Court
Case No : Criminal W.P. No. 34 of 2003

Sarfuddin Aminuddin

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 20-03-2003

Acts Referred:

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

Citation : (2003) 4 MhLj 481

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

Bench : Single Bench

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

Final Decision : Allowed

Judgement

S.T. Kharche, J.—Rule. Rule made returnable forthwith.

2. Heard Mr. Jaiswal, learned counsel, for the petitioner and Mr. Mirza, learned A.P.P., for the respondents.

3. The learned counsel for the petitioner contended that the petitioner was arrested sometimes in January, 1994 by the police personnel of police station Chandur Railway and he was convicted by the learned Additional Sessions Judge, Amravati, for the offence punishable u/s 302 of Indian Penal Code by the order dated 21-1-1995 and is undergoing sentence of life imprisonment at Central Prison, Amravati. The appeal preferred by the petitioner, bearing Criminal Appeal No. 251 of 2002, against his conviction has also been dismissed by this Court. It is contended that the brother and father of the petitioner are also convicted in this case and they are in jail.

4. The learned counsel for the petitioner contended that the petitioner had made an application to the Competent Authority on 15-7-2002 for grant of furlough but the said application came to be rejected on the ground of adverse police report and also on the ground that on earlier occasion the petitioner had surrendered

late. It is contended that the petitioner has justifiable reason to surrender late because of sickness of his mother. It is contended that the petitioner was released on parole for one month from 23-11-2003 and he had applied for extension of parole by one month and also he was required to pay Rs. 500/- to the police constables Pathan and Matin and that the petitioner was under an impression that the period of parole has been extended. It is further contended that the petitioner has been punished for surrendering late by cut in remission in the ratio of 1:5 days as per the rules. It is contended that the petitioner is ready to furnish surety and, therefore, he may kindly be granted furlough for a period of 15 days.

5. Mr. Mirza, learned A.P.P. does not dispute that the petitioner is undergoing life imprisonment at Central Prison, Amravati, and that he had applied for grant of furlough which came to be rejected by the Competent Authority on 23-10-2002 on the ground that there was adverse police report and also on the ground that he had surrendered late in the prison. He further contended that the petitioner was released on parole on 23-11-2001 for thirty days on the ground of sickness of his mother but he failed to surrender on the due date and, therefore, was required to be apprehended and brought back to the prison after 29 days. The learned A.P.P. contended that the order passed by the Competent Authority is sustainable in law.

6. I have carefully considered the contentions canvassed by the learned counsel for both the sides. The application of the petitioner for grant of furlough appears to have been rejected on the grounds mentioned in Sub-rule (10) of Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (For short the Rules). Sub-rule (10) of Rule 4 reads as under :

"4. The following categories of prisoners shall not be considered for release on furlough :--

(1)...

(2)...

(3)...

(4)...

(5)...

(6)...

(7)...

(8)...

(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."

It is true that in the present case the petitioner was granted parole for 30 days from 23-11-2001 and he did not surrender before 24-12-2001 and was required to be apprehended by the jail authorities after 29 days and he was punished for that as per rules and there was cut in remission in the ratio of 1:5 days. It would reveal that the petitioner did not return to the prison on the due date because of sickness of his mother and, according to him, he had also made an application to the Competent Authority for extension of parole and it appears that the impression of the petitioner was not unreasonable and there was a justifiable reason for surrendering late in the jail. In this view of the matter, it is obvious that the Competent Authority was not right in rejecting the application of the petitioner for grant of furlough on this ground especially when it is settled law that availment of furlough is the right of the prisoner.

7. The next ground on which furlough has been refused is Sub-rule (4) of Rule 4 of the Rules which contemplates as under :

"(4) Prisoners 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."

It is true that while rejecting the application of the petitioner for grant of furlough the Competent Authority has assigned reason that there was adverse police report, but it is not known as to what type of enquiry has been conducted to arrive at the conclusion that there was a possibility of breach of peace and tranquility in case the petitioner is released on furlough. It is also not known as to whether the statements of the witnesses were recorded in that context. Thus, the petitioner cannot be denied of his right to avail furlough on this ground and the Competent Authority has committed an error in rejecting his application.

8. The petitioner is ready to furnish surety of his son-in-law Sk. Farid Sk. Bholu, resident of Wathoda, and during the period of furlough leave he intends to reside there only which is within the jurisdiction of police station Tiwsa. In such circumstances, the impugned order passed by the Competent Authority is not sustainable in law. In the result, the impugned order dated 23-10-2002 passed by the Competent Authority is set aside. The petition is allowed. The petitioner is directed to be released on furlough for fifteen days from the date of his release on furnishing surety as per rules. The petitioner is directed to attend police station Tiwsa every day at 10-00 a.m. He is further directed to report to the jail authorities on the due date after availing the furlough leave and in case of default, the jail authorities are directed to apprehend the petitioner and bring him back to the prison.

Rule is made absolute in aforesaid terms. Petition disposed of.