
(2012) 11 BOM CK 0032

In the Bombay High Court

Case No : Criminal Writ Petition No. 823 of 2012

Satyadev Madhavrao Jamgade

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:

Citation : (2013) ALLMR(Cri) 554

Hon'ble Judges : U.D. Salvi, J;A.H. Joshi, J

Bench : Division Bench

Advocate : Y.M. Kshirsagar, Assistant Public Prosecutor, for the Respondent

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith. Heard by consent. This is a letter petition. Petitioner is aggrieved by the order passed by the Divisional Commissioner, Aurangabad, refusing to grant parole.

2. The request for parole has been rejected by the Divisional Commissioner, Aurangabad. While rejecting the prayer for parole, the Divisional Commissioner has made observations that:-

(a) The surety appears to be incompetent to control the prisoner; and

(b) The police have objected to release the petitioner based on apprehension that the prisoner may commit serious crime, and hence, the petitioner's case is not fit for release on parole.

3. Perusal of the petition discloses that petitioner was earlier released on parole and/or furlough totally on ten instances.

4. We had seen the opinion expressed by police and accepted and acted upon by Divisional Commissioner as regards the prisoner is contradicted by previous history of the petitioner.

5. On seeking said contradiction, we were satisfied that the reasons recorded in the order of rejection were wholly unjustified. Therefore, we had passed order on

26.9.2012 and recorded that:-

4] We would like to know from the Divisional Commissioner, Aurangabad, whether the fact that the petitioner has already availed furlough or parole for particular number of occasions was within his knowledge and if it be the fact, he should state the circumstances in which he had endorsed the view expressed by the Police that the petitioner/prisoner is likely to commit offence and his surety is not likely to exert any control upon him.

5] It is seen that adverse reports are sent deliberately, mechanically and with total apathy towards the rights of prisoners, propriety and sense of responsibility and duty. The reports sent by Police with all these glaring defects and are acted upon without testing worthiness thereof. The background and earlier record of the prisoner is not adverted to by the Divisional Commissioner.

6] The order of refusal of parole though is under the signature of the officer of the rank of Divisional Commissioner, who is very high ranking officer in the official hierarchy enjoys the position akin to that of senior amongst Secretaries to the Government, it amounts replication of opinion expressed by a Police Constable, as if being governed by the dictate of the Police Constable. It thus turns out to be conversion of a Police Constable's report into an order by such a highly placed officer. It reveals that the Divisional Commissioner considers that he is either incapable or unable to take different view.

7] We are unable to get persuaded and convinced as to the reasons due to which the statutory power and authority vested in the officers of such a high rank, is subrogated to the maliciously or capriciously rendered opinion of a Police Constable.

8] It prima facie appears that officers holding such high rank show, and behave with total lack of sensitivity towards the rights of the prisoners.

9] It is seen that the Divisional Commissioner has forgotten that giving reasonable liberty to the prisoners, even those convicted of serious offences is a policy of the State. Any officer ought not act in such manner that the policy of the State and philosophy underlying the objective of release of prisoners should be defeated and callously disrespected.

10] In this background and knowing fully well that the reasons cannot be supplanted or later on brought in, to support any order, we want to know the mindset of the officer leading to such orders.

11] We have seen, rather we see everyday, that the orders passed by the Divisional Commissioners are not merely unmindful but are showing callous attitude towards human rights.

6. Therefore, by order dated 20.9.2012, we had directed the Divisional Commissioner, Aurangabad to place on record the modalities as to how he would avoid:-

(a) recurrence of such unmindful passing of order;

(b) Acting blindly upon the false and absurd reports from police which are even contrary to record.

7. The Divisional Commissioner, Aurangabad has filed affidavit and he has placed on record the modalities. Relevant text of affidavit reads as follows:-

(A) It is submitted that every precaution will be taken in future to pass appropriate order as regards improving the procedure for objective decision in the parole cases. It is submitted that henceforth more caution and care shall be taken while deciding such cases. As submitted earlier, police report shall not be accepted as it is, if it is not supported with any objective material.

(B) Directions issued by Principal Secretary (Home) in the Circular dated 24/8/2012 shall be followed scrupulously.

(C) Clarification or justification will be called for in cases where police report is mere judgmental or not factual.

(D) In cases where the police report is adverse but vague, independent report will be called for if required through the concerned District Collector.

(E) In cases of adverse police report, steps will be taken that it should be under the signature of Assistant Police Sub-Inspector along with a clear cut opinion obtained from the police head (i.e. Commissioner of Police or Superintendent of Police). Directions will be issued accordingly.

(Quoted from para No. 5 of the affidavit of Divisional Commissioner appearing at Pages 21 to 24 of Writ Petition Paper Book)

8. The Divisional Commissioner has tendered unconditional apology for the shortcomings and lapses which had crept while passing the order impugned in the Writ Petition.

9. In the aforesaid premises, we would normally accept the undertaking given before this Court.

10. This Court cannot be unmindful to the situation that in spite of standing directions of the State Government governing various aspects governing parole and furlough, those are dispassionately and callously disregarded. The prisoners who are living in isolation many times do not get fair legal assistance. The officers have by and large shown grave, intolerable apathy and disrespect towards bare minimum human rights of prisoners. Recurrence of present nature is not the solitary or the first instance. It is rather like a tip of iceberg. It is almost a matter of habit and addiction. In these premises, solemnity of undertaking on oath fails to inspire confidence as to its whole hearted compliance. Present incumbent may be transferred and new officer may fall back on same habit.

11. In these premises, we cannot be content with the undertaking. We wish and

make those undertakings a part of order of this Court as well. Therefore, we are passing an order in Writ Petition No. 662/2012 directing that the undertaking given in this Court quoted in para No. 7 given by Divisional Commissioner be followed as an order passed by this Court.

12. Again coming back to the facts of present case, now it is crystal clear that adverse police report is liable to be termed and branded as capricious as it is baseless. Petitioner's case deserves to be considered by totally disregarding said adverse report. We, therefore, direct as follows:

(a) The impugned order dated 25.7.2012 rejecting the parole is set aside. The Divisional Commissioner, Aurangabad is directed to pass an order afresh on the basis of material already on record as reflected from his affidavit within 10 days from today.

(b) General directions given by us in Writ Petition No. 662/2012 be followed.

(c) The authorities namely (1) The Secretary (Appeals and Security), Home Department, (2) Director General of Police and (3) Divisional Commissioner, Aurangabad, are directed to take a note of the writ issued in this petition in the register of writs maintained by them. They shall certify the writ under own signature and return it to this Court for the purposes of record within ten days from the date of receipt of the writ.

(d) We direct learned A.P.P. to communicate to the authorities concerned to ensure timely compliance, requisitioned in foregoing order clause.

(e) Rule made absolute in above terms.