

(2017) 03 BOM CK 0150
In the Bombay High Court
Case No : 303 of 2017

Sudhakar s/o. Bajirao Kumbhar

APPELLANT

Vs

The State of Maharashtra & Ors.

RESPONDENT

Date of Decision : 27-03-2017

Acts Referred:

Citation : (2017) 03 BOM CK 0150

Hon'ble Judges : S.S.Shinde, K.K.Sonawane

Bench : DIVISION BENCH

Advocate : S.G.Chincholkar, P.G.Borade

Judgement

1. Heard.
2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.
3. It is the case of the petitioner that he is convict and undergoing life imprisonment in the Open District Prison. He applied for 14 days furlough leave from 13th January, 2015 to 28th January, 2015, and accordingly, the Competent Authority allowed the prayer of the petitioner, and granted furlough leave with effect from 13th January 2015 to 28th January, 2015. The petitioner prayed for extension of furlough leave, and accordingly, the Competent Authority extended furlough leave for further 14 days i.e. till 11th February, 2015.
4. It is the specific case of the petitioner that brother of the petitioner namely Ambadas died on 31st January, 2015, and his funeral and other rites were performed by the petitioner i.e the 10th day [Dashkriya] on 9th February, 2015, and 13th day on 12th February, 2015. Due to aforesaid unavowed circumstance, he could not report back/surrendered on 11th February, 2015, and surrendered on 12th February, 2015.
5. The learned counsel appearing for the petitioner submits that, after the petitioner surrendered to the Jail Authorities, he applied for extension of furlough

leave of 1 day, however, respondent no.2 turned down the request. It is submitted that even the Sessions Court has not properly considered the contention of the petitioner and rejected the prayer for extension of furlough leave of one day i.e. 12th February, 2015.

6. It is submitted that though respondent authorities have power to deduct 5 days remission for each day of overstay by the convict nevertheless the said power is to be exercised judiciously and not arbitrarily. The respondent authorities failed to take into consideration the reason for which the petitioner had stayed back in his house on 11th and 12th February, 2015. In support of her contention that the petitioner has to overstay in his house for genuine reason, and as a result he surrendered one day late, ought to have been considered and accepted by respondent authorities, by extending furlough leave of one day. In support of aforesaid contention, the learned counsel for the petitioner placed reliance on observations made by the Division Bench of the Bombay High Court, Bench at Nagpur, in para 4 and 5 in the case of Rajendra s/o.Shivaji Dongre Vs. State of Maharashtra & Ors. 2013 All M.R. [Cri.] 2568 and also further placed reliance on the ratio laid down in the case of Sheikh Said Sheikh Najir Vs. State of Maharashtra & Anr. 2011 [1] Bom.C.R. [Cri.] 76. and in the case of Raju Natthuji Dhengre Vs. State of Maharashtra & Ors. 2010 [1] Bom.C.R. [Cri.] 910. Therefore, she submits that the petition deserves to be allowed.

7. The learned APP appearing for respondent - State relying upon the averments in the affidavit in reply, filed by one Mr.Rajkumar Keshavrao Sali, working as Superintendent of Open District Prison, Paithan, District Aurangabad, made following submissions:

8. The petitioner has undergone total imprisonment of 24 years, 2 months and 16 days [till 28th February, 2017]. The petitioner had applied for furlough leave, while he was confined in Open District Prison, Paithan, through letter No.4916/2014, dated 9th October, 2014. Accordingly, the Deputy Inspector General [Prison], Aurangabad Region, Aurangabad, sanctioned furlough leave for a period of 14 days under certain terms and conditions, by its order dated 8th January, 2015. It is further submitted that as per Chapter No.37 [Parole and Furlough to prisoners] of the Maharashtra Prison Manual, 1979, after accepting and agreeing to the stipulated terms and conditions in the said order such as Form C Rule 10 and the declaration before release on leave, the petitioner was released from the prison for a period of 28 days on 12th January, 2015 [From 14.01.2015 to 10.02.2015], as per prison's letter No.183/2015, dated 12.01.2015 and the petitioner was given written intimation to surrender back in prison on 11.02.2015.

9. It is submitted that on 11th February, 2015, the petitioner did not surrender himself on due date. The petitioner surrendered himself on 12th February, 2015, instead of 11th February, 2015, due to which he was accounted to be one days late from furlough leave. As per the Prison Rules, a show cause notice having No.1552/2015, dated 04.04.2015, was issued by 1 days to which he submitted

his explanation. The learned APP submits that even on earlier occasion when the petitioner was released on furlough leave, he did not surrender within time, and thereby committed offence under Rule 10 [5] of the Prison [Bombay Furlough and Parole] Rules, 1959, and also as per the State Government Circular No.JLM1010/ Chapter No. 32/PRS2, Mantralaya, Mumbai, dated 2nd August, 2011. It was proposed that the petitioner be punished by deducting 1:5 days of his remission. The said punishment was judicially appraised by the District Sessions Court, Aurangabad. In addition to this, furlough leave surety amount of Rs.2000/was confiscated and deposited in the Government Treasury. Therefore, the learned APP submits that the Petition may be rejected.

10. We have considered the submissions of the learned counsel appearing for the petitioner, and the learned APP appearing for the respondent-State. With their able assistance, we have perused the pleadings and grounds taken in the petition, annexures thereto, reply filed by the respondents, and the judgments cited across the Bar by the learned counsel appearing for the petitioner. Admittedly, the petitioner was released on furlough leave for 14 days on 12th January, 2015. The petitioner applied for extension of furlough leave, and accordingly, his prayer was favourably considered and further 14 days furlough leave was extended, till 11th February, 2015. The petitioner surrendered himself on 12th February, 2015, instead of surrendering on 11th February, 2015. The reasons given by the petitioner for overstay of one day is explained in para 4 and 5 of the Petition. There is no denial to the factual position stated by the petitioner in para 4 and 5, and also in ground Nos. IV and V of the Petition. The reasons given by the petitioner for overstay of one day i.e. on 11th February, 2015 is that his brother Ambadas died on 31st January, 2015, and 10th day [Dashkriya] was on 9th February, 2015 and 13th day was on 12th February, 2015. The petitioner performed ritual of 13th day i.e. on 12th February, 2015 and surrendered / reported back to the Jail on 12th February, 2015. Admittedly, there is one day delay in reporting back to the Jail. The petitioner did apply for extension of furlough leave of one day, but the same was refused by the respondent authorities.

11. Upon careful perusal of the reply filed by the respondents and in particular ExhibitR5 Page 48 of the reply, it appears that, the Superintendent, Open District Prison, Paithan submitted proposal for deduction of remission of 25 convicts for their overstay when they were released on furlough and parole. The name of the petitioners stands at serial no.12. For one day's delay, deduction of 5 days remission, approval is granted by the District Judge⁶ and Additional Sessions Judge, Aurangabad.

12. In our opinion, keeping in view the genuine reason stated by the petitioner for his one day overstay as approved by the District Judge⁶ and Additional Sessions Judge, Aurangabad, only 5 days remission would have been deducted by the respondent authorities.

13. In that view of the matter, we quash and set aside the appraisal order dated

10.10.2016 [Exh.R5 Page 48 with affidavit in reply] to the extent of present petitioner namely Sudhakar Bajirao Kumbhar [Convict No. 4409] at serial No.12 in the list of the appraisal order.

14. We also set aside the consequential action / order of the respondent authorities to confiscate the amount of Rs.2,000/-. We direct respondent no.2 to consider afresh the prayer of the petitioner to extend furlough leave of one day i.e. on 11th February, 2015, in the light of the discussion in the foregoing paragraphs and also keeping in view the judgments in the cases of Rajendra s/o. Shivaji Dongre [cited supra], Sheikh Said Sheikh Najir [cited supra] and also in the case of Raju Natthuji Dhengre [cited supra], as expeditiously as possible, however, within 8 weeks from today and communicate the said decision to the petitioner.

15. With the above observations, the Petition is partly allowed. Rule is made absolute on above terms and the Writ Petition stands disposed of accordingly.

16. Since, Mrs. S.G. Chincholkar, the learned counsel is appointed to prosecute the cause of the petitioner, her fees be paid as per the schedule of fees maintained by the High Court Legal Services SubCommittee, Aurangabad.