
(1992) 06 GUJ CK 0013
In the Gujarat High Court

Vasram Gagji

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 29-06-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 1 GLR 404

Hon'ble Judges : K.J. Vaidya, J;J.M. Panchal, J

Bench : Division Bench

Judgement

K.J. Vaidya, J.

(Rule. Mr. D. K. Trivedi, the learned P.P. waives service of Rule on behalf of respondent Nos. 1, 2 and 3).

1. The petitioner-Vashram Gagji, a prisoner at District Prison, Rajkot, by this writ petition under Article 226 of the Constitution has brought under challenge the impugned order dated 24-12-1991, passed by the District Magistrate, Rajkot, whereby his parole leave application came to be rejected, inter alia praying for releasing him on parole for 30 days on the ground that he was suffering from "Hernia" and that he wanted to get it operated by a private surgeon.

2. Few Relevant facts : According to the petitioner, he made an application on 16-12-1991 to the District Magistrate, Rajkot, praying for his parole leave for 60 days on the medical ground of his operation of "Hernia" by a private surgeon outside the Jail alongwith the medical certificate dated 12-12-1991 in the said regard issued by no less a Doctor than the Medical Officer of the District Jail Dispensary at Rajkot. Immediately pursuant to this application, necessary police report was called for from the the D.S.P. (Rural), Rajkot, who in his turn submitted the same on 7-2-1992 stating therein that as per the statements recorded during the course of inquiry, the petitioner was allegedly reported to be a headstrong person with a ferocious temperament and that a fear has been expressed by some of the persons whose statements came to be recorded that if

he was so released on parole, he would commit murder. The District Magistrate accepting and relying upon this adverse police opinion against the petitioner, rejected his parole leave application by an order dated 24-12-1991 as stated above in para-1 of this judgment, giving rise to the present petition.

3. It has been vehemently contended by Mrs. S. S. Patel, the learned Advocate appearing for the petitioner that the impugned order rejecting the parole application on face of it is illegal and erroneous inasmuch as it suffers from the total non-application of mind on the part of the District Magistrate who has mechanically accepted the so-called adverse police opinion without taking into consideration much less even looking at the catalogue of certain relevant material facts and circumstances standing in favour of the petitioner emerging from the record, no other than the Jail record itself, exposing the very falsity and the absurdity of the alleged adverse police opinion. Developing further and making good this contention, the learned Advocate for the petitioner has highlighted and relied upon certain tale-tell facts and circumstances of the case, which read as under:

(1) That at present, the petitioner is around 65 years undergoing the life sentence in Jail since last 13 years including the period undergone as an under-trial prisoner;

(2) That till today in all, he has enjoyed parole leave for five times, totaling about 146 days on the ground of his personal as well as that of his family members' illness and on other grounds;

(3) That he has also enjoyed furlough leave for 9 times i G., for 135 days;

(4) That during the period he was so released on parole and furlough leave for about 281 days, no untoward incident is reported against him ;

(5) That earlier also when he was released on parole/furlough, police opinion was recorded and yet he was released on parole and furlough;

(6) That on all occasions after enjoying the said parole/furlough leave, he had surrendered to Jail authorities in time;

(7) That his conduct otherwise in Jail is also satisfactory and no Jail offence has been registered against him; and

(8) That upto 31-5-1992, in all he has earned remission of 4 years, 6 months and 5 days.

On the basis of the above, it was further contended that despite the aforesaid -satisfactory record" in favour of the petitioner for all these 13 years, the District Magistrate straightway without taking them into consideration and solely relying upon the alleged one-sided adverse police opinion has dismissed the parole application which is quite illegal and unjust. It was further pointed out by the learned Advocate for the petitioner that this Court in number of cases before it and at least in three of its reported decisions has repeatedly enlightened the

authorities as to how the parole or furlough applications are to be decided more particularly when even the police opinion is found to be adverse, and yet the same have consistently failed to engage the due attention of the competent authorities. These three decisions are : Narsing N. Gamit Vs. State of Gujarat and Others, ; (2) 1990 (2) GLH 95 (Nijar Ramjan v. State of Gujarat and Ors.); (3) 1991 (2) GLH 98 (Batukbhai Ramjibhai v. State of Gujarat and Ors.).

4. As against the above, Mr. D. K. Trivedi, the learned P.P. appearing for the respondents supporting the impugned order passed by the District Magistrate rejecting the parole leave application, submitted that as a District Head, the District Magistrate has a special responsibility to see that the law and order situation is maintained in his District. Mr. Trivedi further submitted that accordingly in cases of parole and furlough also, if the District Magistrate feels that the police opinion sought for is adverse and is against the petitioner, the District Magistrate has no alternative but to refuse the parole/furlough leave in overall interests of law and order situation. The learned P.P. further submitted that in the instant case also, since there was a definite adverse police opinion based on certain statements against the petitioner, the District Magistrate was perfectly justified in rejecting his parole leave application. The learned P.P. on the basis of these submissions ultimately urged that the question involved being purely a question of fact, the Court should not interfere in its extraordinary jurisdiction under Article 226 of the Constitution of India.

5. Now, undoubtedly, the adverse police opinion has certainly some positive, definite relevance and that it must be given its due weightage at the time of considering parole or furlough leave applications, more particularly at the time when such parole or furlough leave is to be granted for the first time after the order of conviction and sentence. But at the same time, the said police opinion standing by itself divorced of other relevant facts and circumstances emerging from the record of the case cannot be mechanically given any undue preference and importance so much so as to refuse the parole leave which otherwise deserves to be granted. In fact, before placing any implicit reliance and banking upon the alleged adverse police opinion, it is also the foremost duty of the District Magistrate and for that purpose any other competent authority empowered to grant parole or furlough leave to first of all coolly examine, appreciate and verify the bona fides, truthfulness, genuineness and the ultimate resultant effect of the alleged adverse police opinion in light of other attending important circumstances, for example, as highlighted in the instant case above in para 3 of this judgment. In the said process, if it is ultimately found that the said adverse police opinion stands outweighed and falsified, the same obviously pales into insignificance losing all its credibility to command any consideration. Many a times, it is found that the alleged adverse police opinion is only a one-sided picture of some false or sometimes imaginary apprehensions of some interested persons which as stated above clearly stands belied by consistent good conduct of the prisoner inside and outside the Jail. If things are not seen and examined from this particular angle and perspective, the parole/furlough leave would

remain idle on the statute book denying the Prison Justice to the deserving accused persons in the Jail.

6. Now bearing in mind the above discussion, if we examine the facts and circumstances of the present case as highlighted above in para 3 of this judgment, it is indeed strange to find how indeed the adverse police opinion could have possibly made any dent and weighed upon the District Magistrate while deciding the present parole leave application ? This only means that the District Magistrate while deciding the present parole leave application has not cared to have a look at the relevant circumstances standing in favour of the petitioner, completely falsifying the alleged adverse police opinion against the petitioner ! ! ! In fact, such a rejection of parole leave application exhibits total non-application of mind. We feel that the District Magistrate or for that purpose any other authority competent to exercise such a power to grant or refuse the parole leave should not mechanically slop itself at the alleged adverse police opinion without taking into consideration other material facts having definite and positive bearing on the decision taking process in favour of the prisoner to obtain parole/furlough leave as the case may be. Looking to the manner in which the discretionary power to release the prisoner on parole in this case came to be exercised, we are sorry to observe that this is not the way to exercise the quasi-judicial powers of deciding the parole/furlough leave applications by the District Magistrate or for that purpose any other competent authority empowered to do so.

7. The matter unfortunately does not simply rest here as it is a matter of great regret that despite the guidelines given by this Court as to how the parole/furlough leave applications are to be decided by the concerned authorities, particularly in cases where there is adverse police opinion, the same for whatever reasons are found to be just ignored as pointed out by the learned Advocate for the petitioner. Looking to the importance of the question involved, viz., "Refusal to take into consideration the directions given by this Court in three of its decisions in matter of "Prison Justice", we at this stage for the benefit of the concerned authorities like to briefly reproduce the relevant paragraphs from the said judgments. Accordingly, in the case of Narsinh N. Gamit v. State of Gujarat and Ors. (supra), it has been observed as under:

I.G., Prisons, should not reject the prisoner's application for releasing him on furlough solely on the ground that there is adverse police opinion. The I. G., Prisons, before deciding the prisoner's application for releasing him on furlough should take into consideration the guidelines laid down under the Prisons (Bombay Furlough and Parole) Rules, 1959.

Firstly, if the prisoner is to be released on parole or furlough for the first time after his conviction, the I. G., Prisons, should consider the facts and circumstances and allegation for which he is convicted He should refer to the judgment and order passed by the Court convicting him and should try to find out whether the prisoner is hardened criminal, habitual offender etc.

Secondly, I. G , Prisons, should consider whether the prisoner has shown any tendency towards crime in the prison and whether at any time he has escaped or attempted to escape from lawful custody or has defaulted in any way in surrendering himself at the appropriate time after release on parole or furlough.

Thirdly, he should take into consideration whether the prisoner was previously released either on furlough or parole and if so released whether at that time the prisoner committed any breach of peace took place.

Further in the case of *Nijar Ramjan v. State of Gujarat and Ors.* in para 2 it has been observed as under:

As per the provisions of the Prisons (Bombay Furlough and Parole) Rules, 1959, the prisoner becomes entitled to furlough if his conduct in jail is good. Once a prisoner has become entitled to furlough, it should ordinarily be not refused on the ground that there is adverse police opinion or that the other side objects to the same. In such circumstances, suitable conditions can be imposed on the prisoner and the police can be asked to see that proper watch is kept on the other side also. If on such grounds furlough leave, for which the prisoners become entitled to, is denied, the prisoner would never be able to enjoy the same and come out of the jail. In such matters, when the prisoner becomes entitled to furlough and even according to the jail authorities he is entitled to be released on furlough, the appropriate executive authority is required to take liberal attitude. In such cases, at the most, the authority should see to it that proper conditions are imposed on the prisoner and the police authorities are informed to take suitable measures to prevent breach of peace.

Similarly, in the case of *Batukbhai Ramjibhai v. State of Gujarat and Ors.* in paras 4 and 5, it has been observed as under:

Para-4. While deciding the application for parole or furlough the I. G., Prisons is forgetting the fact that he is exercising quasi-judicial powers and that too he is exercising the powers under the statutory rules framed by the State Government, under the provisions of the Act. That in number of cases we have observed that on the sole ground that police has given adverse opinion, I. G., Prisons rejects the parole or furlough application without application of his mind to the facts of the case and by not considering the decisions rendered by this Court and the Supreme Court.

Para-5. Before deciding the parole or furlough application, the I. G., Prisons should bear in mind the objects of the Prisons (Bombay Furlough and Parole) Rules, 1959. These Rules enable the prisoner to obtain his release and to return to the outside world for a short prescribed period. The object of such a release of a prisoner can be seen from para 101 of the report submitted by the All India Jail Manual Committee. These objects are considered by the Full Bench of this Court in the case of *Bhikhabhai v. State* reported in 1987 2 GLR. 1171 : 1987(1) GLH 139; AIR, 1987 Guj. 136. The relevant part reads as under:

13. The parole and furlough Rules are part of the penal and prison reform with a view to humanise the prison system. These Rules enable the prisoner to obtain his release and to return to the outside world for a short prescribed period. The objects of such a release of prisoner can be read from para 101 of the report submitted by the All India Jail Manual Committee as also the objects mentioned in the model Prison Manual. These objects:

(i) To enable the inmate to maintain continuity with his family life deal with family matters;

(ii) To save the inmate from the evil effects of continuous prison life:

(iii) To enable the inmate to maintain constructive hope and active interest in life.

8. It is hardly required to be pointed that not to follow the binding decisions of this Court amounts to the contempt of the Court and in a given case, for want of proper explanation, the same can as well bring about serious consequences for the authorities concerned. We hope that this time, the authorities will bear in mind the word of advice from this Court discussed above, in order to see that the mistake that has been repeatedly committed in the past and unfortunately we are noticing it being committed recurringly even today in the matter of rejecting the parole/ furlough leave, is carefully avoided in future to avoid unpleasantness.

9. Now turning to the submissions made by the learned P.P Mr. Trivedi to the effect that since District Magistrate entrusted with the important duty to look after the maintenance of law and order in the District, is bound to take into consideration the adverse police opinion while considering the parole/ furlough leave applications, loses all its efforts in light of the above discussion, and hence, the same is rejected. Duty of maintenance of law and order is of course an important duty and the same cannot be disregarded but at the same time, the said duty is not required to be discharged mechanically, as to deny the "prison justice" to the prisoner for parole/furlough is equally an important duty which cannot be derelected.

10. In the result, this petition is allowed. The impugned order passed by the I. G., Prisons rejecting the second furlough application of the petitioner is quashed and set aside. The petitioner is directed to be released on furlough on usual terms and conditions. Rule made absolute.

Having regard to the importance of the question involved, the Registrar is directed to forward a copy of this judgment to (i) The Secretary, Home Department, Government of Gujarat, Gandhinagar; (ii) The Secretary, Legal Department, Government of Gujarat, Gandhinagar; and (iii) Inspector General of Prisons, Multi-storeyed Building, Lal Darwaja, Ahmedabad, for information and necessary action.