
(2012) 11 BOM CK 0007

In the Bombay High Court

Case No : Criminal Writ Petition No. 734 of 2012

Vedprakash Rama Saunda

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 05-11-2012

Acts Referred:

Citation : (2013) ALLMR(Cri) 1655

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

Bench : Division Bench

Advocate : V.A. Shinde, Assistant Public Prosecutor, for the Respondent

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith. Heard by consent. Perused the petition and impugned order.

2. The order passed by Divisional Commissioner, Aurangabad, dated 11.7.2012, refusing parole is impugned in this petition.

3. The order impugned discloses the reason for refusal of parole which is translated as follows:-

There exists possibility of threat to the breach of peace and danger to the life and security of the members of opposite party.

4. We had directed learned A.P.P. to secure papers.

5. Record is produced before us. It is seen that, earlier the petitioner was set at liberty on account of parole and furlough on four occasions. During these four instances of liberty, any overt act or offence on the part of the petitioner was not reported.

6. It is seen that, during the parole/furlough, the petitioner had overstayed. Thereafter, he had returned to jail voluntarily, before coercive action such as arrest was initiated against him. Penal action by way of forfeiture of remissions has been taken against the petitioner towards his overstay and late reporting.

7. In the background that on previous four occasions nothing untoward was reported against the petitioner from the adverse party or witnesses, it was the duty of the Divisional Commissioner to apply mind and assess the correctness of adverse police report.

8. It prima facie appeared to us that, the Divisional Commissioner has found himself to be bound by the report made by the police as a gospel truth or has failed to apply mind and has passed order mechanically being totally unmindful to the statutory" duty and confidence reposed in him by law. It as well would amount that Commissioner"s act is exhibition of total apathy towards the declared policy of the State to permit the prisoners to avail company of family members or cater to the services needed to the family members.

9. Considering flow of similarly worded order and like practice in passing orders by Divisional Commissioner, Aurangabad has created an impression in our mind that Divisional Commissioner believes and honestly feels that it is his bounden duty or liability to accept the adverse report made by the police.

10. We had, therefore, noted that the texture of order impugned is such that it amounts to depicting a picture that the report submitted by rude and crude police constable is accepted by the Divisional Commissioner sheerly because he is totally unmindful towards rights of prisoners as well oblivious towards his own position and status high in hierarchy and his duty in law. We have also noted that seriousness as regards rights of prisoner was not kept in mind.

11. Therefore, by order passed on 25.9.2012, this Court gave opportunity to the Divisional Commissioner, Aurangabad to place on record explanation showing remorse, if any, towards the highly objectionable way of working which was exhibited.

12. In response to our order, or in its compliance, the Divisional Commissioner, Aurangabad has filed an affidavit. The affidavit contains following undertaking:-

6. It is humbly submitted that in future all the precautions will be taken for evaluating each case independently. It is most humbly submitted that for improving the procedure for objectivity decision in parole cases more caution and care will be taken, while deciding such cases. For doing this, I wish to submit that I will develop some modalities and implement the same in future, which are mentioned in the paras below:-

(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 judgemental 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 pages 16, 17 & 18 of Writ Petition Paper Book)

13. In para No. 8 of the affidavit, the Divisional Commissioner has shown his willingness to reconsider fresh application filed by the petitioner. Para No. 8 of the affidavit is quoted hereunder:

8. Lastly, it is submitted that this deponent is ready to consider fresh application of this petitioner, if filed, by calling fresh police reports by following the procedure mentioned in the above paras and decision in accordance with the law will be taken.....

(quoted from para No. 8 of affidavit)

14. In our considered opinion, the gesture contained in para 8 quoted in the foregoing para, assuring to consider fresh application, if made, serves the cause of lip sympathy. Remorse expressed in the affidavit in earlier paras is completely watered down due to such qualified and most sophisticated concession.

15. The manner in which the concession is given in para No. 8 fits the description of "adding insult to the injury". On one hand an undertaking for undertaking steps for due honour of the human rights is given, remorse is also expressed for the failures, but a whole-hearted submission for purging the wrong and for pleading acceptance of expression of remorse is not made.

16. In the process of hearing, learned A.P.P. had told us that there is legal tangle for reviewing own order. It has now become evident that the order passed by the Divisional Commissioner was induced by a fraudulent and false report. The respondents have not shown a bar created by law which will preclude the Divisional Commissioner, a quasi judicial functionary from reviewing his order, even suo motu, when that order was propelled by a dishonest and a fraudulent report. All that he would be required to do is to write down with eloquence and without reservations that his order was induced by false, fraudulent and erroneous reports.

17. Had the submission contained an expression that the order be set aside, and the same application would be considered afresh, such statement may have been an expression of far more candidness and sincerity. In absence of a gesture of such kind, the text of para No. 8 is not commendable, rather deserves recording of gross dissatisfaction. It is thus vivid that though the Divisional Commissioner

is convinced that his order is wrong, he wants to have his order set aside by this Court than he reviewing it. We are satisfied that the impugned order deserves to be set aside at the hands of this Court. Therefore, we pass following order:

- (a) Order dated 11.7.2012 rejecting the parole is set aside.
- (b) 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.
- (c) The undertaking given in this Court in various other Writ Petitions bearing Nos. 662/2012, 726/2012, 821/2012 and 823/2012 shall form part of this order.
- (d) Any violation or dereliction in compliance shall per-se constitute a contempt.
- (e) The authorities namely (1) The Secretary (Appeals and Security), Home Department, who has filed affidavit in this case for the Government, (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.
- (f) We direct learned A.P.P. to communicate to the authorities concerned to ensure timely compliance, requisitioned in foregoing order clause.
- (g) Rule made absolute in terms of foregoing clause.