

(2021) 02 GUJ CK 0023

In the Gujarat High Court

Case No : R/Special Criminal Application No. 1241 Of 2021

Vikramsinh Chandrasinh Jethva

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 09-02-2021

Acts Referred:

Prisons (Bombay Furlough And Parole) Rules, 1959 — Rule 4, 4(6), 19
Prisons (Bombay Furlough And Parole) Rules, 1989 — Section 3
Indian Penal Code, 1860 — Section 114, 363, 366
Protection Of Children From Sexual Offences Act, 2012 — Section 3(a), 5(m), 6

Citation : (2021) 02 GUJ CK 0023

Hon'ble Judges : Dr. A. P. Thaker, J

Bench : Single Bench

Advocate : Moxa Thakkar

Final Decision : Allowed

Judgement

Dr. A. P. Thaker, J

1. The present Application has been filed by the applicantÂ convict through Jail contending that he is in jail since last 2 years and 9 months as he has been convicted and sentenced for life imprisonment in POCSO Case No. 59/2018 by the learned Special POCSO Additional Sessions Court, Vadodara vide judgment and order dated 22.1.2020.

1.1 It is contended by the applicant that he has preferred application for his 1st furlough leave to the authority however, his request have been rejected by the concerned authority on 29.9.2020 namely on the three grounds namely:Â?
(i) The Police has given negative opinion about his conduct;
(ii) Prisoner is convicted in for the offences punishable under Section 302, 363, 377, 201 of IPC and Section 3(a), 5(m), 6 of the POCSO Act for life

imprisonment;

(iii) The complainant has apprehended that if the prisoner is released on Furlough leave he will create a threat to their life.

2. Heard Ms. Moxa Thakkar, learned APP for the respondent State through VideoÂ?conferencing.

3. Learned APP for the respondent State has submitted that there is Rule 4(6) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (hereinafter

referred to as 'Rules') for the forfeiture of the furlough. As per the impugned order, furlough has not rejected permanently but liberty has been granted

to the applicant to apply after 6 months for furlough. She has also submitted that in view of the jail remarks, it appears that the present convict has

habit of committing offences. She has also contended that there is no illegality conducted by the authority by passing the impugned order, which is

under challenge. She has prayed to dismiss the application.

4. Now it is well settled law by catena of decisions of this Court that 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

object of such a release of prisoner are:

(i) to enable the inmate to maintain continuity with his family life and 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 interests in life.

5. In view of the Prisons Act read with Rules, it appears that the Parole and Furlough system has been incorporated with specific object as referred to

hereinabove. However, the Parole is not an absolute right of the prisoner. Under the provisions of the Act and the Rules, it can be granted or refused

or withdrawn as per rules. At the same time, for furlough leave, there is no need of any ground. But, at the same time for granting Parole Leave, there

must be some reason.

6.. As observed in the case of Bhikabhai Devshi vs. State of Gujarat and Others (supra), the full bench of this Court has observed in ParaÂ23 as

under:

23. Rule 1316 of the Bombay Jail Manual provides that no prisoner shall be punished twice for the same offence. Therefore, once a prisoner is punished for his prison offence of late surrender by the Superintendent the matter of prison offence will rest there and any other punishment thereafter for the same Act or misconduct is barred.

6.1 In Para 27 and 28 of the said judgment, the full bench has observed as under:

The rationale and principle behind Rule 4 is clear. The furlough system has been introduced as a measure of penal reform and to harmonise the penal system and to enable the prisoner to maintain continuity with his family life and to deal with the family matters and to save him from evil effects of continuous jail life and to enable him to gain confidence and to maintain constructive hopes and active interest in life.It is not possible to hold that irrespective of all these circumstances such a prisoner surrendering late have to be examined on merits and the prison authority will have to power duty and discretion to consider and to grant or refuse furlough.

6.2 At the same time, In Para 29 of the said judgment, the full bench has observed as under:

However, in cases of late surrender where there is no element of escape but merely there is a delay in surrendering the question will have to be examined on the facts and circumstances and merits of each case. In given case of a prisoner defaulting in timely surrender who is wanted by the jail authorities and who is not available at the place where ordinarily he should be and who is apprehended by the Police or who surrenders because of the chase by the authority may fall under the first part where he cannot be trusted to be released on furlough again. But such cases are at the other extreme.

6.3 In Para 34 and 35 of the aforesaid judgment, the full bench has also observed as under:

34. It is to be noted that furlough and parole have two different purposes. Furlough is a matter of right, parole is not so. Furlough is to be granted periodically under Rule 3 irrespective of any particular reason merely with a view to enable the prisoner to have family and social ties and to avoid ill effects of continuous prison life and the period of furlough is treated as remission of sentence. Since furlough is to be granted for no particular

reason, it can be denied in the interest of the Society; whereas parole is to be granted only on a sufficient cause (Rule 19) such as cases of severe illness or death of any member of the prisoners family or his nearest relative or for other sufficient cause. Therefore, Parole is not a matter of right and only when there is a sufficient and serious cause the Society and the Jail authority may sometime have to take some risk to release the prisoner on parole but that would be no ground for releasing the prisoner on routine furlough irrespective of his past conduct and performance. Even parole may be denied to a prisoner even when he makes out sufficient cause for release on parole if the competent authority is satisfied on valid grounds that release of a prisoner on parole will be against the interest of the society or the prison administration.

35. The prison authorities cannot reject as ineligible the request of due furlough of the prisoners who have surrendered late in past.

7. It is pertinent to note that Rule 3 of the The Prisons (Bombay Furlough and Parole) Rules, 1989 provides for the provisions as to when prisoner may

be granted furlough. The said Rule 3 reads thus:

3. When Prisoner may be granted furlough.

(1) A Prisoner, who is sentenced to imprisonment for a period exceeding one year but not exceeding five years, may be released on furlough for a period of two weeks at a time for every year of actual imprisonment undergone.

(2) A Prisoner, who is sentenced to imprisonment for a period exceeding five years may be released on furlough for a period of two weeks at a time for every two years of actual imprisonment undergone:

Provided that a prisoner sentenced to imprisonment for more than five years but not to imprisonment for life may be released on furlough every year

instead of every two years during the last five years of his unexpired period of sentence:

Provided further that a prisoner sentenced to life imprisonment may be released on furlough every year instead of every two years after he completes

seven years actual imprisonment.

Note 1: The period of imprisonment in this rule includes the sentence or sentences awarded in lieu of fine in case the amount of fine is not paid.

Provided that if fine is paid during the period of imprisonment and the total sentence thereby reduced to a term not exceeding 5 years he shall

thereafter be eligible for release every year in accordance with sub-rule (1) instead of every two years under sub-rule (2).

Note 2. For the purposes of this rule, the period of imprisonment shall be computed as the total period for which a prisoner is sentenced even though one or more sentences be concurrent.

Note 3. If at any time a prisoner who could have been granted furlough is either not granted or is refused the same the period for which he could have been granted the furlough shall not be carried forward but shall lapse.

Note 4. The period of two weeks may be initially extended up to three weeks in the case of prisoners desiring to spend the furlough outside the State of Bombay.

Note 5. An order sanctioning the release of a prisoner on furlough shall cease to be valid if not given effect to within a period of two months of the date thereof.

8. On the analysis of the aforesaid provisions of Rule 3, it is clearly found from the Note 3 thereof makes provisions that if at any time a prisoner

who could have been granted furlough is either not granted or is refused, the same the period for which he could have been granted the furlough shall

not be carried forward but shall lapse. Now in the present case, this is not the ground of rejection of the application of Furlough. The jail authority has

simply rejected his prayer on the three grounds which has been reproduced hereinabove. Now, in view of the decision of the full bench referred to

hereinabove and the facts that the prisoner has already been undergone the sentence by the concerned Court for the Jail offences, the Authority ought

to have taken into consideration the other facts available on record.

9. In view of the aforesaid observation, the impugned order passed by the competent authority is required to be quashed and set aside and the

authority needs to reconsider the request of the applicant for granting him 1st Furlough Leave.

10. For the reasons above, the Application succeeds. Rule is made absolute by quashing and setting aside the refusal of furlough due to the applicant

prisoner by directing the respondent authority to consider the grant of furlough/furloughs due to the applicant in accordance with law within a period

of one month from today.