

A STATE OF MAHARASHTRA AND ANR.
v.
SURESH PANDURANG DARVAKAR

APRIL 13, 2006

B [ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Prison (Bombay Furlough and Parole) Rules, 1959:

C *rr. 4(4) and 6—Release of prisoner on furlough—Grounds for—
Explained—On facts, relative of prisoner refused to stand surety for him—
Besides, High Court while releasing him has not recorded any finding that
District Magistrate and/or Superintendent of Police did not object to the release
on ground of public peace and tranquility—Order of High Court set aside—
Prisons Act, 1894—s.3(5A).*

D State Government filed the present appeal challenging the order of
the High Court releasing the respondent on furlough.

Allowing the appeal, the Court

E HELD: 1.1. Rule 4(4) of the Prison (Bombay Furlough and Parole)
Rules, 1959 mandates that the prisoner who seeks to be released cannot
be released if not recommended by the concerned authority on the ground
of public peace and tranquility. The High Court has not recorded any
finding that the report of the District Magistrate and/or Superintendent
of Police had not objected to the release on furlough on the ground of
public peace and tranquility. [1131-E-F]

F 1.2. Further, Rule 6 requires that (a) a relative of the applicant
should be willing to receive him while on furlough and (b) he must be ready
to enter into a surety bond. In the instant case, the relatives refused to
execute such surety bond. The verification reports received by the police
from the District Magistrate and the Superintendent of Police indicate that
G the sister of the respondent refused to stand surety as the respondent
allegedly committed rape on his step mother. In view of the adverse police
report and non-compliance with the requirements stipulated under rr. 4(4)
and 6, the competent authority rejected the application for grant of
furlough. Unfortunately, the High Court does not appear to have

addressed itself to these relevant aspects. Order of the High Court is set aside. It is, however, open to the respondent to apply for release on fulfillment of the requisite conditions as prescribed in the Rules.

[1131-A-D; F]

CRIMINAL ORIGINAL JURISDICTION : Criminal Appeal No. 421 of 2006.

From the Judgment and Order dated 7.12.2005 of the High Court of Judicature of Bombay at Nagpur in Cr. W.P. No. 504 of 2005.

S.S. Shinde and V.N. Raghupathy for the Appellants.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. Leave granted.

Heard counsel for the appellants.

None appears for the respondent in spite of service of notice. The State of Maharashtra and the Superintendent, District Prison, Akola, Maharashtra challenge the order passed by learned Single Judge of the Bombay High Court, Nagpur Bench accepting respondent's prayer for release on furlough. By the impugned order, learned Single Judge directed release of the respondent on furnishing his surety of Rs. 500 lying in deposit with the jail authorities.

According to the learned counsel for the appellants, the High Court has not kept in view Rules 4(4) and 6 of the Prison (Bombay Furlough and Parole) Rules, 1959 (in short, the 'Rules'). The said Rules have been framed in exercise of powers conferred by Clauses (5) and (28) of Section 59 of the Prisons Act, 1894 (in short the 'Act') in its application to the State of Maharashtra as it stood then. The expression 'Furlough System' is defined in Clause 5(A) of Section 3 of the Act, while the expression 'Parole System' is defined in Clause 5(B) of the said provision. The underlying object of the Rules relating to 'Parole' and 'Furlough' have been mentioned in the report submitted by All India Jail Manual Committee and the objects mentioned in Model Prison Manual. The 'Furlough' and 'Parole' have two different purposes. It is not necessary to state the reasons while releasing the prisoner on furlough, but in case of parole reasons are to be indicated in terms of Rule 19. But release on furlough cannot be said to be an absolute right of the prisoner as culled out from Rule 17. It is subject to the conditions mentioned in Rule 4(4) and 6. Furlough is allowed periodically under Rule 3 irrespective

A of any particular reason merely with a view to enable the prisoner to have family association, family and social ties and to avoid ill effect of continuous prison life. Prison of furlough is treated as a period spent in the prison. But Rule 20 shows that period spent on parole is not to be counted as remission of sentence. Since the furlough is granted for no particular reason, it can be denied in the interest of society; whereas parole is to be granted only on sufficient cause being shown.

B Rule 4(4) and 6 read as follows :

Rule 4: *When prisoners shall not be granted furlough.*

C The following categories of prisoners shall not be considered for release on furlough:

xx

xx

xx

D (4) Prisoners whose release is not recommended in Greater Bombay by the Commissioner of Police and elsewhere, by the District Magistrate on the ground of public peace and tranquility.

Rule 6: *Furlough not to be granted without surety:*

E A prisoner shall not be granted furlough unless he has a relative willing to receive him while on furlough and ready to enter into a surety bond in Form A appended to these rules for such amount as may be fixed by the Sanctioning Authority.

F [Provided that the Sanctioning Authority may dispense with the requirement of execution of such bond by relatives of prisoners confined in Open Prisons as defined in clause (b) of rule 2 of the Maharashtra Open Prisons Rules 1971.]

G A bare reading of Rule 4(4) indicates that release can be refused when the same is not recommended by the Commissioner of Police in Greater Bombay and elsewhere, by the District Magistrate on the ground of public peace and tranquility.

H Rule 6, *inter alia*, provides that a prisoner shall not be granted furlough unless he has a relative willing to receive him while on furlough and is ready to enter into a surety bond in Form A appended to the Rules for such amount as may be fixed by the Sanctioning Authority. The proviso authorizes the Sanctioning Authority to dispense with the requirement of execution of such

bond by relatives of prisoners confined in Open Prisons as defined in clause (b) of rule 2 of the Maharashtra Open Prisons Rules, 1971. Therefore, the twin requirements flowing from Rule 6 are (a) a relative of the applicant should be willing to receive him while on furlough and (b) he must be ready to enter into a surety bond. In the instant case, the relatives refused to execute such surety bond. The verification reports received by the police from the District Magistrate, Amravati and Superintendent of Police, Amravati indicate that the sister of the respondent refused to stand surety as the respondent allegedly committed rape on his step mother and has been convicted for offences punishable under Sections 376 and 354 of the Indian Penal Code, 1860 and sentenced to suffer imprisonment for seven years with fine. In view of the adverse police report and non-compliance with the requirements stipulated under Rules 4(4) and 6, the Competent Authority rejected the application for grant of furlough by order dated 18.07.2005.

Unfortunately, the High Court does not appear to have addressed itself to these relevant aspects. It took note of the fact that nobody was willing to stand surety for release of the respondent. The High Court directed that he can be released on furnishing surety of amount lying in deposit with the jail authorities. That is not the only condition for release on furlough. There is another requirement. Even if it is held for the sake of argument that furnishing of surety of any amount lying in deposit with the jail authorities can be construed to be in compliance with the requirements of Rules 6, Rule 4(4) mandates that the prisoner who seeks to be released cannot be released if not recommended by the concerned authority on the ground of public peace and tranquility. The High Court has not recorded any finding that the report of the District Magistrate and/or Superintendent of Police had not objected to the release on furlough on the ground of public peace and tranquility.

Looked at from any angle, the High Court's order is indefensible. The same is set aside. It is, however, open to the respondent to apply for release on fulfillment of the requisite conditions as prescribed in the Rules. Needless to say that the same shall be considered in its own perspective in accordance with law. The appeal is allowed.

R.P.

Appeal allowed.