

(1988) 07 BOM CK 0078

Bombay High Court

Case No: Criminal Writ Petition No. 376 of 1987

Sharad Keshav Mehta

APPELLANT

Vs

State of Maharashtra  
and others

RESPONDENT

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Date of Decision: July 19, 1988

Acts Referred:

- Penal Code, 1860 (IPC) - Section 302

Hon'ble Judges: V.P. Tipnis, J; M.L. Pendse, J

Bench: Division Bench

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### Judgement

Pendse, J.

The petitioner was convicted for committing an offence under S. 302 of the I.P.C. and was sentenced to life imprisonment on October 11, 1983. The petitioner made an application for release on furlough on October 14, 1985 and that application was rejected on February 11, 1986. The prisoner applied for reconsideration on March 8, 1986 and April 21, 1986, but the earlier rejection was confirmed on July 5, 1986. The action denying furlough to the prisoner is under challenge.

2. Mr. Rane, learned counsel appearing for the prisoner, submitted that the Home Department of the State Government has framed rules relating to grant of furlough and the prisoner was denied furlough in contravention of the rules. Rules regarding grant of furlough are included in Chapter XXXVII of the Maharashtra Prison Manual, 1979. R. 3(2) inter alia prescribes that 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 of every two years of actual imprisonment undergone. The second proviso to R. 2 prescribes 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. The prisoner was convicted on October 11, 1983 and had, admittedly, completed a period of two years on October 14, 1985 and was, therefore, entitled to be released on furlough. It was urged on behalf of the State

Government that R. 17 prescribed that the right to be released on furlough is not a legal right conferred on the prisoner and, therefore, even if the conditions are satisfied, the Government is not bound to release the prisoner on furlough. In our judgment, the submission is entirely devoid of merit. It is not open to the Home Department of the State Government to prescribe rules giving facility of release of the prisoner on furlough by one hand and then providing that the prisoner has no legal right to be released on furlough. In our judgment, R. 17 cannot deprive the prisoner of the substantial right to be released on furlough provided the requirements of the rule are complied with. The submission advanced on behalf of the State Government overlooks the distinction between the right to be released on parole and the right to be released on furlough. Parole is granted for certain emergency and release on parole is a discretionary right while release on furlough is a substantial right and accrues to a prisoner on compliance with certain requirements. The idea of granting furlough to a prisoner is that the prisoner should have an opportunity to come out and mix with the society and the prisoner should not be continuously kept in jail for a considerable long period. The interaction with the society helps the prisoner in realising the folly which he has committed and the liberty which he is deprived of. In modern times the effort is to improve the prisoner and the punishment is to be considered as an action for reformation of an individual. It is futile to suggest that a prisoner should be kept behind the bars continuously and should not be permitted to come out on furlough unless the authorities think it wise. In our judgment, the State Government has framed rules in exercise of the powers conferred by Clauses (5) and (28) of S. 59 of the Prisons Act, 1894 and on framing of such rules, R. 17 cannot deprive the prisoner of the right to be released on furlough. In spite of the enactment of R. 17, we hold that the right to be released on furlough is a substantial and legal right conferred on the prisoner.

3. It is then urged on behalf of the State Government that R. 4 sets out categories of prisoners who cannot be considered for release on furlough. Sub-rule (4) of R. 4 prescribes that 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 tranquillity shall not be considered for release on furlough. It was urged that the Commissioner of Police, Pune, had informed the Jailer that in case the prisoner is released on furlough, then there is likelihood of disturbance of peace and, therefore, furlough cannot be recommended. We enquired as to what is the material available for the Commissioner of Police to come to this conclusion and no material was pointed out to us. It hardly requires to be stated that it is not the sweet will of the Commissioner of Police which can be the basis for coming to the conclusion that release of the prisoner on furlough would lead to disturbance of public peace and tranquillity. Unless the Commissioner of Police has material from which a reasonable inference can be drawn, the right to release on furlough cannot be deprived by resort to R. 4. In the present case the prisoner was convicted for committing murder of his wife and it surpasses our imagination as to how the

release of such person is likely to disturb public peace and tranquillity. The Commissioner of Police must apply his mind to the facts of each case and should not as a formality submit a report denying the substantial and legal right of the prisoner. In our judgment, as the State Government has failed to point out any material to indicate that release of the prisoner on furlough would disturb public peace and tranquillity, the rejection of the application is misconceived.

4. The report made by the Commissioner of Police also indicates that the prisoner was unable to produce a relative who was willing to receive him while on furlough and ready to enter into a surety bond which is a requirement of R. 6 and Mr. Rane submits that the prisoner produced a relative who was willing to receive him and enter into a surety bond. Though Mr. Rane made a submission that the prisoner has no relation or friend, we are not inclined to accept the same. It hardly requires to be stated that the prisoner cannot claim as of right to be released on furlough without complying with the requirements of the rules framed for release of prisoner on furlough. We will not enquire as to whether the prisoner can comply with the requirements of the rules in the present proceedings. The Jailer shall release the prisoner on furlough provided the requirements of the rules are complied with. The Jailer shall not deprive the present prisoner of the advantage on the basis of the report made by the Commissioner of Police without any material.

5. Accordingly, the petition partly succeeds and the Jailer of the Yeravada Central Prison, Pune, is directed to dispose of the application for furlough filed by the prisoner in accordance with the judgment.

6. Order accordingly.