

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CRI 39 OF 2020

Adwayya @Swami Kuntainanwar Petitioner

V e r s u s

State of Goa and Ors. Respondents

Shri S. Saudagar, Advocate for the Petitioner.

Shri G. Nagvenkar, Addl. Public Prosecutor for the respondents.

Coram:- DAMA SESHADRI NAIDU J.

Date: 11th September 2020

P.C.

The petitioner is a convict serving a life sentence, now lodged in Modern Central Jail, Colvale. Earlier on two occasions, he was released on furlough. He returned to the prison on both occasions, once the furlough period ended. For the third time, he applied. Then on 4.3.2020, the jail authority granted him the furlough. But as the pandemic broke out and a nationwide lockdown was imposed, he could not avail himself of that. So, on 30.4.2020, he requested the authorities to re-schedule his furlough. Then, on 18.5.2020 the authorities told the petitioner to apply afresh. Accordingly, he did.

2. This time, however, the second respondent, who is the competent authority, rejected it. Aggrieved, the petitioner has filed this Criminal Writ Petition.

3. As seen from the record and as articulated by the learned Addl. Public Prosecutor, the objections that weighed with the authority are these:

- (i) The petitioner's brother in his native village in Karnatka is disinclined to receive him.
- (ii) The villagers do not like him because he has left the village long back.
- (iii) There is every possibility that he might abuse the liberty granted and may not return to prison.
- (iv) Given the rising COVID-19, the petitioner's release is unsafe for himself, as well as society.

4. In response to the submissions advanced by the petitioner's counsel, the learned Additional Public Prosecutor has added a couple more contentions. According to him, the furlough is a matter of discretion and has many rules to comply with. In this context, he has drawn my attention to Rules 311 to 318 of Goa Prison Rules.

5. Heard Shri S. Saudagar, the learned counsel for the petitioner, and Shri G. Nagvenkar, the learned Addl. Public Prosecutor for the respondents.

6. Indeed, there is no denying that furlough is a matter of discretion of the jail authorities, and it depends on various variables, including the convict's previous conduct. In this case, the petitioner has had his furlough twice earlier. And it was uneventful. He faced no allegations of violating any law. Besides, just a couple of months ago, the authorities felt it fit to grant him furlough. Had it not been for the intervening pandemic, he would have enjoyed it. Now, the question could be whether any new information came to

light that made the authorities conclude that any indulgence towards the petitioner is unwarranted.

7. Let me address the objections set out in the impugned order of rejection. Indeed, furlough is a matter of discretion. But that discretion always ought to be informed by reasons. First, we may look at the brother's assumed disinclination to receive the petitioner. I see no material available on that count. All that the brother told the police was that he was unaware why his brother wanted to come.

8. At any rate, if at all the petitioner is to be released, he needs to comply with the requirements as set out in the Rules. And one of them is a surety from a third party. The record reveals that on the last two occasions, his brother stood surety. If he comes forward this time too, that anyway will signify his willingness to accept his brother.

9. As to the villagers, they have not reported to the police that the petitioner had been unruly or menacing in the village when he was on furlough. They only said that they did not like him because he left the village long back. I am afraid it cannot be a vitiating factor. As to the prevailing pandemic, I agree it is a cause for concern. But despite its being around, now the borders have been opened and conditions relaxed. If the petitioner is to be released, the authorities may test him before his release and also when he returns.

10. Eventually, I address the authorities' concern about whether the petitioner is likely to abuse the liberty granted to him. I may note that the

Rules in this regard have the remedy. First, even prima facie, there is no material for the authorities to suspect the petitioner's conduct or bona fides. More particularly, in March the furlough was granted, and by September there could not have been any drastic change for a person in prison. For a free man, days are events; for a prisoner, days are mere numbers. The authorities, too, do not seem to have noticed any changes, either.

11. Finally, I may address the issue raised by the learned Additional Public Prosecutor: can the Court interfere with an order the authorities passed exercising their statutory discretion? True, the Courts are very slow in interfering with any discretion exercised by authorities concerned. Nevertheless, even as we see from Rule 315 of the Rules, any rejection ought to be informed by reasons, and those reasons are always amenable to judicial review. Here, I find the reasons for refusal quite shaky. Pitted against a person's liberty, an order curtailing it—even in the context of a convict's rights—must have been based on a firmer foundation. It is a furlough for a limited period, in the backdrop of earlier uneventful furloughs. But under no circumstance will this Court advocate the dilution of the statutory requirements or precautions.

12. Under these circumstances, I set aside the order and direct the second respondent to grant furlough to the petitioner by imposing whatever suitable conditions the second respondent deems fit within the statutory parameters.

13. When the learned APP has expressed a doubt whether the petitioner's Criminal Appeal against his conviction has been disposed of, the petitioner's counsel is emphatic in his answer: this Court dismissed it on 24.7.2019. I record that submission.

14. The petition stands disposed of

DAMA SESHADRI NAIDU, J

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