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STATE OF GUJARAT & ANR.

v.

NARAYAN @ NARAYAN SAI @ MOTA BHAGWAN  
ASARAM @ ASUMAL HARPALANI

B

(Criminal Appeal No. 1159 of 2021)

OCTOBER 20, 2021

**[DR. DHANANJAYA Y CHANDRACHUD AND  
B. V. NAGARATHNA, JJ.]**

- C *Bombay Furlough and Parole Rules: Release on furlough – Respondent was convicted under ss.376(2)(c), 377, 354, 504, 506(2), 508 of the IPC – By order dated 8 May 2021, application for furlough was rejected by the Sanctioning Authority on the ground that the respondent had engaged in illegal activities inside the jail, including keeping a mobile phone and making contacts outside the*
- D *jail; has engaged in criminal misconduct to hinder the judicial proceedings during trial by threatening, assaulting and murdering witnesses; and that in case the respondent is released on furlough, the lives of the witnesses in the original trial would be under threat – Respondent successfully filed petition under s.482 CrPC for*
- E *setting aside order dated 8 May 2021 – Aggrieved State filed instant appeal – Held: r.4(4) of the Rules provides for denial of furlough on grounds of disturbance to public peace and tranquility – Order dated 8 May 2021 has adduced a number of circumstances which cumulatively indicated that the release of the respondent on furlough may lead to a violation of public peace – The order referred*
- F *specifically to the threat he and his followers posed to the complainant and other persons who deposed at the trial – An attempt was made to threaten and suborn the investigating team and the witnesses – Respondent and his father have a mass following of persons who owe loyalty to them and there was a reasonable apprehension of a disruption of public peace and tranquillity – During the trial, attempts were made to bribe public officials – The conduct after the trial, in jail, was not shown to be above reproach – Thus, the opinion of the Sanctioning Authority under the Rules did not suffer from perversity nor did it consider material extraneous to the Rules governing the grant of furlough.*
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*Bombay Furlough and Parole Rules: rr.3, 4, 17 – Right of prisoner to furlough – Held: rr.3, 4 and 17 do not confer a legal right on a prisoner to be released on furlough. The grant of furlough is regulated by r.3 and r.4 – While r.3 provides the eligibility criteria for grant of furlough for prisoners serving different lengths of imprisonment, r.4 imposes limitations – The use of the expression “may be released” in r.3 indicates the absence of an absolute right – This is further emphasised in r.17 which states that said Rules do not confer a legal right on a prisoner to claim release on furlough – Thus, the grant of release on furlough is a discretionary remedy circumscribed by rr.3 and 4.*

*Furlough and parole – Distinction between – Held: Furlough and parole envisage a short-term temporary release from custody – While parole is granted for the prisoner to meet a specific exigency, furlough may be granted after a stipulated number of years have been served without any reason – The grant of furlough is to break the monotony of imprisonment and to enable the convict to maintain continuity with family life and integration with society – Although furlough can be claimed without a reason, the prisoner does not have an absolute legal right to claim furlough – The grant of furlough must be balanced against the public interest and can be refused to certain categories of prisoners.*

**Allowing the appeal, the Court**

**HELD:** 1. From a reading of Rules 3, 4 and 17 of the **Bombay Furlough and Parole Rules**, these Rules do not confer a legal right on a prisoner to be released on furlough. The grant of furlough is regulated by Rule 3 and Rule 4. While Rule 3 provides the eligibility criteria for grant of furlough for prisoners serving different lengths of imprisonment, Rule 4 imposes limitations. The use of the expression “may be released” in Rule 3 indicates the absence of an absolute right. This is further emphasised in Rule 17 which states that said Rules do not confer a legal right on a prisoner to claim release on furlough. Thus the grant of release on furlough is a discretionary remedy circumscribed by Rules 3 and 4. [Para 15][346-A-C]

2. The principles may be formulated in broad, general terms bearing in mind the caveat that the governing rules for parole

- A and furlough have to be applied in each context. The principles are thus: Furlough and parole envisage a short-term temporary release from custody; While parole is granted for the prisoner to meet a specific exigency, furlough may be granted after a stipulated number of years have been served without any reason;
- B The grant of furlough is to break the monotony of imprisonment and to enable the convict to maintain continuity with family life and integration with society; Although furlough can be claimed without a reason, the prisoner does not have an absolute legal right to claim furlough; The grant of furlough must be balanced against the public interest and can be refused to certain categories
- C of prisoners. [Para 20][350-C]
  - 3. The furlough application of the respondent was rejected by the DGP by an order dated 8 May 2021. The DGP relied on the concurrent opinion of the ACP, DCP and Jail Superintendent to deny the grant of furlough, based on the following
- D circumstances: the gravity of the offences that the respondent has been convicted of, including, Sections 376(2)(c), 377, 354, 504, 506(2), 508 of the IPC; the criminal misconduct of the respondent, during the trial, including attempts to bribe public officials; threatening, assaulting and murdering of witnesses by followers of the respondent; threatening police officials and inspectors of the Income Tax Department; mass following of the respondent willing to commit offences at the instance of the respondent; and illegal activities while in custody, such as keeping a mobile phone and attempting to establish contact with outsiders. [Para 21][350-G-H; 351-A-C]
- F 4. The DGP has invoked Rules 4(4), 4(6) and 4(10) of the Rules to dismiss the furlough leave application. Rule 4(4) of the Rules provides that prisoners whose release is not recommended by the Commissioner of Police on grounds of public peace and tranquillity may not be considered eligible for furlough. Rule 4(6)
- G provides for rejection of furlough leave where the conduct of the prisoner is not satisfactory and Rule 4(10) provides that prisoners who have escaped, or attempted to escape from lawful custody or have defaulted in surrendering, may not be eligible for furlough. The record does not show that the respondent has made any
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efforts to escape from lawful custody. After the grant of furlough in December 2020 and interim bail from 31 January 2021 till 3 February 2021, the respondent surrendered to the authorities. Thus, Rule 4(10) of the Rules cannot be relied upon to refuse furlough leave to the respondent. [Paras 23, 24][351-E-G]

5. Turning now to Rule 4(6) of the Rules, the Jail Superintendent has given a negative opinion based on the fact that the respondent kept a mobile phone inside the jail illegally and attempted to make contacts with the outside world. Rule 4(4) of the Rules provides for denial of furlough on grounds of disturbance to public peace and tranquillity. The order dated 8 May 2021 has adduced a number of circumstances which cumulatively indicate that the release of the respondent on furlough may lead to a violation of public peace. The order refers specifically to the threat he and his followers pose to the complainant and other persons who deposed at the trial. An attempt has been made to threaten and suborn the investigating team and the witnesses. The respondent and his father have a mass following of persons who owe loyalty to them and there is a reasonable apprehension of a disruption of public peace and tranquillity. During the trial, attempts have been made to bribe public officials. The conduct after the trial, in jail, has not been shown to be above reproach. The respondent was released earlier this year to accommodate a genuine need to attend to his mother's health at the relevant time. The submission that the objections mentioned in the order dated 8 May 2021 were raised by the authorities to the grant of furlough in December 2020 in spite of which the High Court allowed the plea for furlough is meritless. The previous order of the High Court did not deal with these submissions. The order only referred to the fact that the respondent's mother was suffering on account of a cardiac arrest and granted furlough on this basis. The opinion of the Sanctioning Authority under the Rules does not suffer from perversity nor does it consider material extraneous to the Rules governing the grant of furlough. [Paras 25, 26][351-H; 352-A-F]

*State of Maharashtra v. Suresh Pandurang Darvakar*  
(2006) 4 SCC 776 : [2006] 3 SCR 1128 ; *Asfaq v. State*

- A *of Rajasthan (2017) 15 SCC 55 : [2017] 11 SCR 571; State of Haryana v. Mohinder Singh (2000) 3 SCC 394 : [2000] 1 SCR 698 – referred to.*

Case Law Reference

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|---|-------------------|-------------|---------------------|
| B | [2006] 3 SCR 1128 | referred to | para 10 (iv) and 16 |
|   | [2017] 11 SCR 571 | referred to | paras 10 and 19     |
|   | [2000] 1 SCR 698  | referred to | para 18             |

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1159 of 2021.

- C From the Judgment and Order dated 24.06.2021 of the High Court of Gujarat at Ahmedabad in R/Special Criminal Application No.5199 of 2021.

Tushar Mehta, SG, Kanu Agrawal, Aniruddha P. Mayee, Advs. for the Appellants.

- D Sanjiv Punalekar, Suvidutt M. S., Ankush Mahajan, Dharma Raj, Mrs. Anu B., Ms. Vijayalakshmi Raju, Mrs. Dhanya C., Advs. for the Respondent.

The Judgment of the Court was delivered by

**DR. DHANANJAYA Y CHANDRACHUD, J.**

- E 1. The appeal arises from a judgment of a Single Judge of the High Court of Gujarat dated 24 June 2021. The Single Judge directed the release of the respondent on furlough.

**A Factual Background**

- F 2. An FIR, C.R. No. I-31/2013, was registered against the respondent on 6 October 2013 at Jahangirpura Police Station for offences under Sections 376(2)(c), 377, 354, 344, 357, 342, 323, 504, 506(2), 120-B, 212, 153 and 114 of the Indian Penal Code 1860<sup>1</sup>. Charges were framed. On the conclusion of the trial, the Sessions Court by a judgment dated 30 April 2019 convicted the respondent. The conviction and sentence are summarised below:

- G (i) Section 376(2): life imprisonment together with a fine of Rs. 1,00,000/-, and in default, simple imprisonment of one year;

H <sup>1</sup> “IPC”

- (ii) Section 377: life imprisonment together with a fine of Rs. 1,00,000/-, and in default, simple imprisonment of one year; A
- (iii) Section 354: three years' rigorous imprisonment together with a fine of Rs. 25,000/-, and in default, simple imprisonment of six months; B
- (iv) Section 504: one year's rigorous imprisonment together with a fine of Rs. 5,000/-, and in default simple imprisonment of three months; C
- (v) Section 506(2): three years' rigorous imprisonment together with a fine of Rs. 5,000/- and in default, simple imprisonment of one month; C
- (vi) Section 508: one year's rigorous imprisonment together with a fine of Rs. 5,000/- and in default, simple imprisonment of one month; D
- (vii) Section 323: six months' rigorous imprisonment together with a fine of Rs. 500/- and in default, simple imprisonment of one month; D

The respondent was directed to pay compensation of Rs. 5,00,000/- under Section 357(3) of the Code of Criminal Procedure 1973, to the prosecutrix. All sentences were directed to run concurrently. E

3. The respondent was released on temporary bail for a period of three weeks on 16 April 2015 and for a period of two days on 15 February 2019. The respondent was granted furlough from 5 December 2020 for a period of fourteen days by the order of the High Court dated 2 December 2020. Due to the ill-health of his mother, the respondent was released on temporary bail from 31 January 2021 to 3 February 2021. F

4. On 17 March 2021, the respondent filed an application<sup>2</sup> for furlough through the Surat Lajpore Central Jail. The application was rejected by the Director General of Police, Jail and Reformatory Administration<sup>3</sup> on 8 May 2021. The DGP dismissed the application because: G

- (i) The Jail Superintendent had given a negative opinion on the furlough application as the respondent had engaged in illegal

<sup>2</sup> Judicial/Furlough/1194/201

<sup>3</sup> "DGP"

- A activities inside the jail, including keeping a mobile phone and making contacts outside the jail;
- (ii) The respondent if released on furlough may violate law and order;
- B (iii) The opinion of the Assistant Commissioner of Police<sup>4</sup> was sought on the grant of furlough and he had raised objections for the following reasons:
- (a) During the investigation of the offence, the Deputy Commissioner of Police<sup>5</sup>, had guided a team to arrest the respondent and had disclosed her official cell phone details to the media to solicit information from the public regarding the whereabouts of the respondent. On 16 October 2013 and 18 October 2013, the DCP received phone calls from a person claiming to be a 'sadhak' of the respondent, threatening to kill the DCP if she continued to search for the respondent. On investigation, it was revealed that he was a resident of Madhya Pradesh and an FIR was registered against him;
- (b) The administrator of the ashram in Surat visited the respondent and the respondent gave a chit to him in his handwriting for giving a bribe of Rs. 1 crore. The administrator of the ashram and others gave a bribe to the police officers, medical officers and judicial officers to weaken the case against the respondent. An FIR against these persons was registered. In case the respondent is released on furlough, he may continue such offensive acts;
- (c) In order to break the morale of the complainant, her husband, who was a witness in the trial, was assaulted with a lethal weapon on 28 February 2014. A complaint, ICR No. 50/2014, was registered under Sections 307 and 188 of the IPC against persons connected with the respondent. While these persons have been arrested, they continue to attract a huge

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H <sup>4</sup> "ACP"  
<sup>5</sup> "DCP"

- crowd of followers in India and may commit offensive acts in the future. The respondent may also threaten the husband of the complainant or other witnesses if he is released on furlough; A
- (d) A complaint, ICR No. 31/2014, was registered under Sections 324 and 114 of the IPC and Section 135 of the Gujarat Police Act 1951, against two unknown persons for assaulting and injuring one Rakesh Jayantilal Patel, a witness in the Asaram case, on 10 March 2014 on his head with a weapon; B
- (e) A complaint, ICR No. 69/2014, was registered under Sections 307, 326(A), and 114 of the IPC against two persons who claimed to be sadhaks of Asaram for assaulting and injuring one Dinesh Bhagchandani, a witness in the Asaram case, on 16 March 2014 by throwing acid on him and attempting to murder him; C
- (f) A complaint, ICR No. 133/2014, was registered under Sections 307 of the IPC, Sections 25(1)(A)(B) and 27 of the Arms Act 1959, and Section 135(1) of the Gujarat Police Act 1951, against one unknown person for assaulting and injuring one Amrut Prajapati, a witness in the Asaram case, on 23 May 2014 by firing a revolver with the intention of causing death. The witness suffered severe injury and died during treatment; D
- (g) The offences against the witnesses in Asaram's case and in the respondent's case were committed by one Pravin Vakil. The offences against these witnesses increased after this accused visited the respondent in jail on 15 February 2014. Thus, there is a possibility of the involvement of the respondent in the commission of these offences; E
- (h) An FIR, CR No. 243/2015, was registered under Sections 307, 452, 120B, and 34 of the IPC and Section 25(1)(a) of the Arms Act 1959, for assaulting one Mahendra Chavala, a witness in the case against the respondent. The respondent was passively involved in the said incident; and F
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- A (i) In connection with the investigation of the case against the respondent, 42 bags were seized from the flat of asadhak. Pursuant to the direction of the High Court, the bags were handed over to the Income Tax Department. A raid was conducted by the Income Tax Department on sadhaks staying across thecountry and crores of rupees worth of properties had been seized. Most of these investments were on behalf of the respondent and his father, Asaram. During the investigation, an Inspector was threatened of being murdered and a complaint was lodged;
- B
- C (iv) The present DCP agreed with the above opinion of the ACP. Given the conduct of the respondent, his criminal network and his followers, the DCP objected to the grant of furlough to him;
- D (v) The respondent was granted furlough in December 2020 on account of his ailing mother. The furlough was granted with the permission of the High Court; and
- (vi) The first furlough leave application of the respondent was dismissed in 2019. In response to the said application as well, the ACP had given a negative opinion to not grant furlough, which was corroborated by the then DCP. The reasons for rejecting the first furlough leave application are the same as those produced above.
5. Based on the above opinion, the DGP rejected the grant of furlough for the following reasons:
- F (i) The respondent is accused of high profile cases of rape and atrocities punishable under provisions of Sections 376(2)(c), 377, 354, 504, 506(2), 508 of the IPC;
- G (ii) The opinions of the ACP and DCP indicate that in addition to the main offence, the respondent has engaged in criminal misconduct to hinder the judicial proceedings during trial by threatening, assaulting and murdering witnesses;
- (iii) frequent assaults on witnesseshave been registered against the followers of the respondent and seven offences have been registered against him;
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- (iv) one of these seven offences is being supervised by an IPS officer, Shoba Bhutada, who has been threatened by the followers of the respondent; A
- (v) the respondent is not a normal prisoner who may be considered for grant of furlough. He has a group of thousands of head strong followers, spanning across the country who are willing to commit offences at the instance of the respondent; B
- (vi) in case the respondent is released on furlough, the lives of the witnesses in the original trial will be under threat. The respondent may interrupt the judicial proceedings for prosecution of the seven offences pending against him; and C
- (vii) the respondent is engaged in dangerous activities of organized crime and has a network of persons and a financial background.

6. The respondent moved the High Court under Section 482 CrPC D for setting aside the order dated 8 May 2021. The respondent relied on the proviso to Rule 3(2) of Prisons (Bombay Furlough and Parole) Rules 1959<sup>6</sup> and urged that a prisoner sentenced to life imprisonment may be released on furlough every year instead of every two years, after he completes seven years of imprisonment. It was also submitted that furlough leave is granted as a matter of right. E

7. Allowing the application of the respondent, the Single Judge of the High Court held that:

- (i) The reasons furnished by the DGP for denying furlough were considered by the High Court in its previous order dated 2 December 2020, pursuant to which the respondent was released on furlough for a period of two weeks; F
- (ii) No untoward incident took place after the respondent was released in December 2020 and the respondent did not misuse the liberty granted to him during the period of furlough; G
- (iii) Although the respondent was involved in criminal activities earlier, no illegal activity has been reported since the respondent was released in December 2020;

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<sup>6</sup> “Bombay Furlough and Parole Rules” or “Rules”

- A (iv) The reasons furnished by the DGP have already been considered by the High Court and are not reasonable or justified;
- (v) The respondent has been under imprisonment for a period of seven and a half years. Under the Bombay Furlough and Parole Rules, he is entitled for furlough leave once every year.
- 8. Based on the above reasons, the Single Judge allowed the respondent to be released on furlough leave with police escort for a period of fourteen days from the date of his release on the execution of
- C a personal bond of Rs. 1,00,000/- before the Jail Authority and other conditions that the authority may deem fit. The respondent was to reside at the residence of his mother in Ahmedabad and was directed to surrender on the expiry of his leave. On the request of the Additional Public Prosecutor, the Single Judge of the High Court stayed the impugned order for a period of three weeks. By an order dated 6 August 2021, the implementation of the impugned order was stayed until 13 August 2021.
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9. A Special Leave Petition<sup>7</sup> was filed by the State of Gujarat against this order. On 12 August 2021, a bench comprising of one of us, (Justice DY Chandrachud) and Justice MR Shah stayed the implementation of the order of the High Court.

E **B Rival Submissions**

10. Assailing the order of the High Court, Mr Tushar Mehta, Solicitor General appearing on behalf of the State of Gujarat, has made the following submissions:

- F (i) Rules 3 and 4 of the Bombay Furlough and Parole Rules indicate that furlough cannot be allowed mechanically as a matter of right. Rule 3 creates an option for the prisoner to be released on furlough and the said Rule is subject to Rule 4;
- G (ii) Under sub-Rules 4, 6 and 10 of Rule 4 of the Bombay Furlough and Parole Rules, prisoners whose release is not recommended by the Commissioner of Police or the District Magistrate on grounds of public peace and tranquility; prisoners whose conduct is not satisfactory in the opinion

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H <sup>7</sup> SLP (Crl.) No. 5699 of 2021

- of Superintendent of the Prison; and prisoners who have escaped or attempted to escape from custody or have defaulted in surrendering after release on parole or furlough, shall not be considered for release on furlough; A
- (iii) Rule 17 of the Bombay Furlough and Parole Rules provides that the Rules do not confer a legal right on the prisoner to claim release on furlough; B
- (iv) In **State of Maharashtra v. Suresh Pandurang Darvakar**<sup>8</sup> this Court has held that furlough can be refused in cases where there are concerns of public peace and tranquility; C
- (v) Furlough can be denied if it is not in the interest of the society as held in **Asfaq v. State of Rajasthan**<sup>9</sup>; C
- (vi) The facts of the case indicate the gross nature of crime, which disentitles the respondent to any discretionary relief. The DGP has noted that the respondent had attempted to bribe public officials; caused injury to the husband of the complainant and other witnesses; threatened to murder police inspectors and an inspector of the Income Tax Department; and attempted to derail the judicial process; D
- (vii) The reliance placed by the High Court on its previous order dated 2 December 2020 is misplaced as the order did not deal with the objections of the authorities on denial of furlough. The grant of furlough under Rule 3 is subject to Rule 4 of the Bombay Furlough and Parole Rules which accords weight to the opinion of the authorities for grant of furlough. Unless this subjective satisfaction of the authorities, which is susceptible to judicial review, is taken away, furlough cannot be granted. The High Court has, neither in its previous order dated 2 December 2020 nor in the impugned order, made any observation on the correctness of the objections of the authorities against the grant of furlough; and E
- (viii) The purpose of furlough is to enable the prisoner to meet family needs and to maintain a connection with society. Even if it is accepted that the prisoner is entitled to a furlough of F
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<sup>8</sup> (2006) 4 SCC 776

<sup>9</sup> (2017) 15 SCC 55

- A                          fourteen days in a year after serving a sentence of seven years, in this case the respondent was granted furlough on 2 December 2020 and was granted interim bail from 31 January 2021 to 3 February 2021. Thus, the respondent cannot be granted furlough again in the month of July 2021.
- B                          11. Opposing the submissions of the Solicitor General, Mr Sanjiv Punalekar, counsel for the respondent, urged that:
- (i)                        On 5 May 2021, the father of the respondent, Asaram Bapu, tested positive for COVID-19 and is suffering from multiple colonic diverticulosis gastrointestinal bleeding. On 16 February 2021, the respondent's father was admitted to the hospital, where it was found that he had an attack of unstable angina or acute coronary syndrome. The respondent's father is suffering from 11 major chronic ailments and suffered from septic shock and pulmonary embolism in June 2021;
  - (ii)                       There is no family member around the respondent's father and his condition is critical. The respondent is the only son of his father. The respondent's mother is also severely ill and is being taken care of by her daughter. Thus, the respondent is required to be released on furlough to take care of his father's medical care and treatment;
  - (iii)                      The appeal against the respondent's conviction and the application for suspension of sentence are pending for hearing before the High Court;
  - (iv)                       The respondent has been released on temporary bail and furlough leave on four occasions and no untoward incident was reported during his release;
  - (v)                        The furlough leave is a matter of right and is granted periodically to prisoners to continue their association with their families;
  - (vi)                       Apart from the present case, the respondent is an accused in two criminal cases and has been granted bail in both the cases;
  - (vii)                      With respect to the other offences mentioned in the order dated 8 May 2021, the respondent is not associated with the attacks, his name has not been mentioned in the FIRs and there is no proof to show that the respondent is

connected to the accused in those cases. Since he has A already been convicted, there is no question of threatening the witnesses;

- (viii) The infractions referred to by the Superintendent of Prison to the grant of furlough to the respondent are minor and have no nexus to respondent's behaviour once he is released B on furlough;
- (ix) The difference between grant of furlough and parole is that furlough is granted to prisoners after they have undergone a specified period of sentence, parole is a conditional temporary release on ground of good conduct for a C situational relief; and
- (x) Rule 3(2) of the Bombay Furlough and Parole Rules provides that a prisoner sentenced to life imprisonment may be released on furlough "every year" after he completes seven D years of imprisonment. The phrase "every year" must be interpreted to mean every calendar year.

12. Having adverted to the rival submissions of the parties, we shall now address the issue at hand.

### C Analysis

13. The Bombay Furlough and Parole Rules were made pursuant to Section 59 of the Prisons Act 1894 and are applicable in the State of Gujarat. Under sub-Section 5 of Section 59 of the Prisons Act 1894, the State Government may make rules for the award of marks and shortening of sentences. Sub-Section 28 of Section 59 also grants power to the State Governments to make rules for carrying out the purposes of the F Act.

14. Rule 3 of the Bombay Furlough and Parole Rules provides for the grant of furlough to prisoners and reads as follows:

#### **"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** H

- 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:
- B **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.**
- C 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 is reduced to a term not exceeding 5 years he shall thereafter be eligible for release in accordance with sub-rule (1) instead of every two years under sub-rule (2).
- D 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.
- E 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.
- F 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.
- G Note 5: An order sanctioning the release of a prisoner on furlough shall cease to be valid if not given effect within a period of two months of the date thereof.”
- (emphasis supplied)
- H Rule 4 further stipulates the conditions when furlough shall not be granted:  
“4. **When prisoners shall not be granted furlough.-**  
The following categories of prisoners shall not be considered for release on furlough:-

(1) Habitual prisoners. A

(2) Prisoners convicted of offenses under sections 392 to 402 (both inclusive) of the Indian Penal Code.

(3) Prisoners convicted of offence under the Bombay Prohibition Act, 1949 B

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

(5) Prisoners who, in the opinion of the Superintendent of the prison show a tendency towards crime. C

**(6) Prisoners whose conduct is in the opinion of Superintendent of the Prison, not satisfactory enough.**

(7) Prisoners confined in the Ratnagiri Special Prison [other than prisoners transferred to that prison for jail services.] D

(8) Prisoners convicted of offences of violence against person or property committed for political motives, unless the prior consent of the State Government to such release is obtained.

(9) A prisoner or class of prisoners in whose case the State Government has directed that the prisoner shall not be released or that the case should be referred to it for orders. E

**(10) Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole on furlough.** F

(11) Prisoners convicted of offences under the Narcotic Drugs and Psychotropic Substance Act, 1985.”

**(emphasis supplied)**

Rule 17 of the Rules clarifies the nature of the grant of furlough: G

**“Nothing in these rules shall be construed as conferring a legal right on a prisoner to claim release on furlough.”**

**(emphasis supplied)**

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- A 15. From a reading of the above provisions it is evident that the Bombay Furlough and Parole Rules do not confer a legal right on a prisoner to be released on furlough. The grant of furlough is regulated by Rule 3 and Rule 4. While Rule 3 provides the eligibility criteria for grant of furlough for prisoners serving different lengths of imprisonment, Rule 4 imposes limitations. The use of the expression “may be released” in Rule 3 indicates the absence of an absolute right. This is further emphasised in Rule 17 which states that said Rules do not confer a legal right on a prisoner to claim release on furlough. Thus the grant of release on furlough is a discretionary remedy circumscribed by Rules 3 and 4 extracted above.
- C 16. The applicability of these Rules was considered by a two judge Bench of this Court in **State of Maharashtra v. Suresh Pandurang Darvakar**<sup>10</sup>. Justice Arijit Pasayat, speaking for the Bench held that:
- D “5. According to the learned counsel for the appellants, the High Court has not kept in view Rules 4(4) and 6 of the Prisons (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 Rules 4(4) and 6. Furlough is allowed periodically under Rule 3 irrespective 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. Period of furlough is treated as a period spent in the prison.
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- H <sup>10</sup> (2006) 4 SCC 776

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.**

[...]

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7. **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 tranquillity.”**

(emphasis supplied)

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17. In **Suresh Darvakar** (supra), the Court distinguished parole from furlough. While both parole and furlough are temporary releases from confinement, parole is granted only for a specific purpose. A prisoner is entitled to apply for furlough once he has served the minimum years of sentence as stipulated in Rule 3.

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18. The difference between bail, furlough and parole was also considered by a two-judge Bench of this Court in **State of Haryana v. Mohinder Singh**<sup>11</sup>. Justice DP Wadhwa, referring to the Haryana Good Conduct Prisoners (Temporary Release) Act 1988 and the Punjab Good Conduct Prisoners (Temporary Release) Act 1962, observed that

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“17. ”Furlough” and “parole” are two distinct terms now being used in the Jail Manuals or laws relating to temporary release of prisoners. These two terms have acquired different meanings in the statute with varied results. Dictionary meanings, therefore, are not quite helpful. In this connection we may refer to the Haryana Good Conduct Prisoners (Temporary Release) Act, 1988 which has repealed the Punjab Good Conduct Prisoners (Temporary Release) Act, 1962. The Punjab Act was earlier applicable in the State of Haryana. The language of both the Acts is same and it may be useful to refer to Sections 3 and 4 of any of these two Acts to understand the difference between parole and furlough:

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<sup>11</sup> (2000) 3 SCC 394

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- A 18. It would be thus seen that when a prisoner is on parole his period of release does not count towards the total period of sentence while when he is on furlough he is eligible to have the period of release counted towards the total period of his sentence undergone by him.”
- B 19. In **Asfaq v. State of Rajasthan**<sup>12</sup>, Justice AK Sikri, speaking for the two-judge Bench observed that:
- “11. There is a subtle distinction between parole and furlough. A parole can be defined as conditional release of prisoners i.e. an early release of a prisoner, conditional on good behaviour and regular reporting to the authorities for a set period of time. It can also be defined as a form of conditional pardon by which the convict is released before the expiration of his term. Thus, the parole is granted for good behaviour on the condition that parolee regularly reports to a supervising officer for a specified period. Such a release of the prisoner on parole can also be temporarily on some basic grounds. In that eventuality, it is to be treated as mere suspension of the sentence for time being, keeping the quantum of sentence intact. Release on parole is designed to afford some relief to the prisoners in certain specified exigencies.
- C [...]
- E 14. Furlough, on the other hand, is a brief release from the prison. It is conditional and is given in case of long-term imprisonment. The period of sentence spent on furlough by the prisoners need not be undergone by him as is done in the case of parole. Furlough is granted as a good conduct remission.”
- F Summarising the difference between parole and furlough, the Court noted that
- “16. [...]
- G (i) Both parole and furlough are conditional release.
- (ii) Parole can be granted in case of short-term imprisonment whereas in furlough it is granted in case of long-term imprisonment.
- (iii) Duration of parole extends to one month whereas in the case of furlough it extends to fourteen days maximum.

(iv) Parole is granted by Divisional Commissioner and furlough is granted by the Deputy Inspector General of Prisons. A

(v) For parole, specific reason is required, whereas furlough is meant for breaking the monotony of imprisonment.

(vi) The term of imprisonment is not included in the computation of the term of parole, whereas it is vice versa in furlough. B

(vii) Parole can be granted number of times whereas there is limitation in the case of furlough.

(viii) Since furlough is not granted for any particular reason, it can be denied in the interest of the society. C

(See *State of Maharashtra v. Suresh Pandurang Darvakar* [*State of Maharashtra v. Suresh Pandurang Darvakar*, (2006) 4 SCC 776 : (2006) 2 SCC (Cri) 411] and *State of Haryana v. Mohinder Singh* [*State of Haryana v. Mohinder Singh*, (2000) 3 SCC 394 : 2000 SCC (Cri) 645] .) D

After noting the purpose of parole on the one hand and furlough on the other, the Court indicated the need for a balance to be maintained between two competing interests while granting parole or furlough- that of reforming the convict on one hand and the public purpose and interests of society on the other: E

“19. Having noted the aforesaid public purpose in granting parole or furlough, ingrained in the reformation theory of sentencing, other competing public interest has also to be kept in mind while deciding as to whether in a particular case parole or furlough is to be granted or not. **This public interest also demands that those who are habitual offenders and may have the tendency to commit the crime again after their release on parole or have the tendency to become a threat to the law and order of the society, should not be released on parole.** This aspect takes care of other objectives of sentencing, namely, deterrence and prevention. This side of the coin is the experience that great number of crimes are committed by the offenders who have been put back in the street after conviction. Therefore, while deciding as to whether a particular prisoner deserves to be released on parole or not, the aforesaid aspects have also to be kept in mind. To put it tersely, the authorities are supposed to address the question as F

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- A to whether the convict is such a person who has the tendency to commit such a crime or he is showing tendency to reform himself to become a good citizen.
20. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that they aspire to live as law-abiding citizens. Thus, parole programme should be used as a tool to shape such adjustments.”
- C **(emphasis supplied)**
20. The principles may be formulated in broad, general terms bearing in mind the caveat that the governing rules for parole and furlough have to be applied in each context. The principles are thus:
- D (i) Furlough and parole envisage a short-term temporary release from custody;
- (ii) While parole is granted for the prisoner to meet a specific exigency, furlough may be granted after a stipulated number of years have been served without any reason;
- E (iii) The grant of furlough is to break the monotony of imprisonment and to enable the convict to maintain continuity with family life and integration with society;
- (iv) Although furlough can be claimed without a reason, the prisoner does not have an absolute legal right to claim furlough;
- F (v) The grant of furlough must be balanced against the public interest and can be refused to certain categories of prisoners.
- G 21. The furlough application of the respondent was rejected by the DGP by an order dated 8 May 2021. The DGP relied on the concurrent opinion of the ACP, DCP and Jail Superintendent to deny the grant of furlough, based on the following circumstances:
- H (i) the gravity of the offences that the respondent has been convicted of, including, Sections 376(2)(c), 377, 354, 504, 506(2), 508 of the IPC;

- (ii) the criminal misconduct of the respondent, during the trial, including attempts to bribe public officials; threatening, assaulting and murdering of witnesses by followers of the respondent; threatening police officials and inspectors of the Income Tax Department; A
- (iii) mass following of the respondent willing to commit offences at the instance of the respondent; and B
- (iv) illegal activities while in custody, such as keeping a mobile phone and attempting to establish contact with outsiders.

22. These allegations have been refuted by the respondent on the ground that apart from the present case, he is accused in two other offences in which he has been granted bail. It has been urged that in the offences relating to intimidation and injury to the witnesses mentioned in the order dated 8 May 2021, the police has not charged him and he was not involved in any manner. It has been urged that even otherwise, these offences occurred prior to 2016, after which there have been no complaints against or in relation to the respondent. The respondent has laid emphasis on the fact that when he was granted furlough in December 2020, he did not violate the conditions of furlough, nor was there any disruption of law and order. C

23. The DGP has invoked Rules 4(4), 4(6) and 4(10) of the Rules to dismiss the furlough leave application. Rule 4(4) of the Rules provides that prisoners whose release is not recommended by the Commissioner of Police on grounds of public peace and tranquillity may not be considered eligible for furlough. Rule 4(6) provides for rejection of furlough leave where the conduct of the prisoner is not satisfactory and Rule 4(10) provides that prisoners who have escaped, or attempted to escape from lawful custody or have defaulted in surrendering, may not be eligible for furlough. E F

24. The record does not show that the respondent has made any efforts to escape from lawful custody. After the grant of furlough in December 2020 and interim bail from 31 January 2021 till 3 February 2021, the respondent surrendered to the authorities. Thus, Rule 4(10) of the Rules cannot be relied upon to refuse furlough leave to the respondent. G

25. Turning now to Rule 4(6) of the Rules, the Jail Superintendent has given a negative opinion based on the fact that the respondent kept a mobile phone inside the jail illegally and attempted to make contacts H

- A with the outside world. Rule 4(4) of the Rules provides for denial of furlough on grounds of disturbance to public peace and tranquillity. The order dated 8 May 2021 has adduced a number of circumstances which cumulatively indicate that the release of the respondent on furlough may lead to a violation of public peace. The order refers specifically to the threat he and his followers pose to the complainant and other persons who deposed at the trial. An attempt has been made to threaten and suborn the investigating team and the witnesses. The respondent and his father have a mass following of persons who owe loyalty to them and there is a reasonable apprehension of a disruption of public peace and tranquillity. During the trial, attempts have been made to bribe public officials. The conduct after the trial, in jail, has not been shown to be above reproach. The respondent was released earlier this year to accommodate a genuine need to attend to his mother's health at the relevant time. Based on this, we are unable to agree with the line of reasoning of the High Court.
- D 26. It has been urged that the objections mentioned in the order dated 8 May 2021 were raised by the authorities to the grant of furlough in December 2020 in spite of which the High Court allowed the plea for furlough. We do not find merit in this submission. The previous order of the High Court did not deal with these submissions. The order only referred to the fact that the respondent's mother was suffering on account of a cardiac arrest and granted furlough on this basis. The Solicitor General in fact stated that the earlier proceedings were not contested before the High Court since the ground for furlough then was the ill-health of the mother of the respondent. The opinion of the Sanctioning Authority under the Rules does not suffer from perversity nor does it consider material extraneous to the Rules governing the grant of furlough.
- E 27. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 24 June 2021.
- F 28. Pending application (s), if any, stand disposed of.

Devika Gujral

Appeal allowed.