

ITEM NO.25 Court 4 (Video Conferencing) SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Cr1.) No(s).5699/2021

(Arising out of impugned final judgment and order dated 24-06-2021 in SCRA No. 5199/2021 passed by the High Court of Gujarat at Ahmedabad)

THE STATE OF GUJARAT & ANR.

Petitioner(s)

VERSUS

NARAYAN @ NARAYAN SAI @ MOTA BHAGWAN ASARAM
@ ASUMAL HARPALANI

Respondent(s)

(FOR ADMISSION and I.R.)

Date : 12-08-2021 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. Tushar Mehta, SG
 Mr. Aniruddha P. Mayee, AOR
 Mr. Kanu Agarwal, Adv.

For Respondent(s) Mr. Sanjiv Punalekar, Adv.
 Mr. Suvidutt M.S., Adv.
 Mr. Ankush Mahajan, Adv.
 Mr. Dharam Raj Chandel, Adv.
 Ms. Anu B., Adv.
 Ms. Vijayalakshmi Raju, Adv.
 Ms. Dhanya C., Adv.
 Mr. Varinder Kumar Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

- 1 The order of the Single Judge of the High Court of Gujarat dated 24 June 2021 granting the respondent furlough for a period of two weeks was initially stayed for a period of three weeks, while the stay was subsequently extended and is due to expire tomorrow (13 August 2021). Hence, the order has not been implemented as of date.

2 Mr Tushar Mehta, learned Solicitor General appearing on behalf of the petitioners, has adverted to the provisions of Rule 3 and Clauses (4) and (6) of Rule 4 of the Bombay Furlough and Parole Rules 1959¹, as they apply in the State of Gujarat. It has been submitted that:

- (i) As explained in the decision of this Court in **State of Maharashtra v Suresh Pandurang Darvakar**², the grant of furlough is not a matter of right and this is expressly stipulated in Rule 17 of the Rules;
- (ii) Clause 4 of Rule 4 contemplates that furlough may be denied where the Commissioner of Police is of the view that it would not be in the interests of public peace and tranquility;
- (iii) Clause 6 of Rule 4 stipulates that a prisoner whose conduct in the opinion of the Superintendent of the Prison is not satisfactory enough be denied furlough;
- (iv) The respondent has been convicted of an offence under Section 376 read with Section 34 of the Indian Penal Code 1860 and the circumstances impinging on public peace and tranquility are set out in the order dated 8 May 2021 (Annexure P-1) of the Director General of Police;
- (v) The respondent was released on furlough for a period of two weeks in the month of December 2020 on the ground of the ill-health of his mother and in view of this ground, the State did not adopt an adversarial approach; and
- (vi) In view of the antecedent circumstances relating to the crime, intimidation of witnesses including the investigating officer, serious issues of law and

1 “Rules”

2 (2006) 4 SCC 776

order and of peace and tranquility are apprehended.

- 3 The proviso to Rule 3(2) provides that a prisoner sentenced to life imprisonment may be released on furlough "every year", after he completes seven years actual imprisonment. The issue as to whether the expression "every year" would refer to a calendar year or to the duration of a year after the last release on furlough would merit interpretation by this Court.
- 4 Issue notice.
- 5 Mr Sanjiv Punalekar, learned counsel, appears on behalf of the respondent and seeks and is granted one week's time to file a counter affidavit.
- 6 The rejoinder affidavit, if any, be filed within one week thereafter.
- 7 Pending further orders, there shall be a stay of the operation of the impugned order of the Single Judge of the High Court dated 24 June 2021, directing the release of the respondent on furlough for a period of two weeks.
- 8 List the Special Leave Petition on 26 August 2021.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER