

**RECOMMENDATIONS FOR SUITABLE
AMENDMENT IN THE PRISONS (BOMBAY
FURLOUGH AND PAROLE) RULES, 1959**

1. The Prisons (Bombay Furlough and Parole) Rules, 1959 provides for grant of Furlough and Parole in the State of Gujarat.

Now-a-days, the crime is increasing day-by-day that too, when a person is convicted for a serious offence and he is released on bail, furlough or parole during that period of release, he commits serious offences. Particularly, he takes revenge and causes injury to the relatives of the victim and/or the witnesses. The impact or release on furlough on the society and the country as a whole, therefore, is a very relevant and germane consideration. It is well settled that the nature of the offences committed, for consideration of furlough leave application, is germane and relevant factor.

2. Recently, it was reported in the Times of India on 20th September, 2016 that, *“A day after a ten year old girl was found gang-raped and brutally murdered – her*

hands and heads chopped off – from her neighbour’s house, it has emerged that the prime accused, 22 years old Saleem alias Chhotu had spent four years in jail for raping an eight years old in 2012 and had come of prison only recently.” A number of such instances are coming to light occasionally.

3. In the case of **Ishwarsinh M. Rajput v/s. State of Gujarat [(1990) 2 GLR 1365]**, the Gujarat High Court has observed as under:—

“17. ... Robbery and dacoity are offences which are directed against the entire society at large and the entire society is exposed to the danger emanating from them. In case of murder only that person against whom the perpetrator has a motive or animus alone is exposed to danger from him and not others. So far as robbery and dacoity are concerned, any victim is a good victim and the entire society is exposed to the risk. ...

18. *It would be worthwhile to reproduce the observations made by the Supreme Court in the case of **Durand Didier v/s. Chief Secretary, Union Territory of Goa [AIR 1989 SC 1966].** With deep concern, we may point out that the organized activities of the underworld and the*

clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and becoming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.”

Similar would be the case of human trafficking where young girls are kidnapped and are thrown at the mercy of pimps for prostitution purposes.

For a long time, we have not amended and revised the rules. Hence, it is necessary to amend the Furlough and Parole Rules to deal with the prevailing circumstances.

As such, the State of Maharashtra has amended the Rules in the years 2012 and 2016.

4. Further, in the case of **Sharad Devaram Shelake v/s. State of Maharashtra (decided on 28th April, 2016)**, the Bombay High Court referred to the notification dated 23rd February, 2012 of the Home Department, Government of Maharashtra. Para-2 of the judgment is reproduced as under:—

“A very short question is involved in this petition under Article 226 of the Constitution of India. It is directed against the Notification issued by the Home Department dated 23.02.2012. By this Notification, Rule 4 of the Furlough and Parole Rules was amended and after sub-rule (10), sub-rule 11 to 19 were added.”

In the said Judgment, amended sub-rules (11) to (19) of Rule 4 were referred to which are as follows:—

- “(11) Prisoners whose presence is considered dangerous or otherwise prejudicial to public peace and order by the District Magistrate and Superintendent of Police;*
- (12) Prisoners who are considered dangerous or have been involved in serious prison violence alike assault, outbreak, riot, mutiny or escape or who have been found to be instigating the serious violation of prison discipline;*

- (13) *Prisoners convicted for offences such as dacoity, terrorist crimes, kidnapping, smuggling including those convicted under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985) and foreigner prisoners;*
- (14) *Prisoners convicted for failure to give surety for maintaining peace or good behaviour;*
- (15) *Prisoners suffering from mental illness, if not certified by the medical officer to have recovered;*
- (16) *Prisoners whose work and conduct have not been good during the preceding period of twelve months;*
- (17) *Prisoners convicted of offences against any law relating to matters to which the executive power of the Union Government extends, unless approved by the Union Government;*
- (18) *Prisoners whose release on leave is likely to have repercussions elsewhere in the country;*
- (19) *Prisoners whose release on leave is likely to have repercussions during the period of code of conduct of local self Government, Legislature and Parliament elections.”*

5. Subsequently, the State of Maharashtra modified the said rules by issuing a Notification dated 26th August, 2016. The relevant part thereof is as under:—

“In Rule 4 of the Principal Rules,

(a) for the words, “The following categories of prisoners shall not be considered for release on furlough”, the words, “All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough” shall be substituted.

(b) after sub-rule (10), the following sub-rules shall be added, namely:—

(11) Whose appeal in conviction in Higher Court or any other cases filed against them either by Central Government or any of the State Governments in any of the Courts are pending and for which bail is not granted to him / her by the related Courts;

(12) Who doesn't have sound mental health as per his medical report, unless the psychiatrist recommends his release;

(13) Who is sentenced for offences such as dacoity, terrorist crimes, mutiny against state, kidnapping for ransom, smuggling of narcotic or psychotropic substance, rape or rape with murder;

(14) Who is sentenced for life imprisonment till death;

- (15) *Who is involved in serious prison crime such as assault, outbreak of riot, mutiny or escape, instigating violation of prison discipline;*
- (16) *Who in the opinion of police/prison authorities are likely to jump furlough;*
- (17) *Whose immediate presence in society may be dangerous and may disturb public peace;*
- (18) *Those involved in sexual offences against minor and human trafficking.”*

6. The amendment carried out by the State of Maharashtra in the year 2012 was upheld by the Bombay High Court in the case of **Sharad Devaram Shelake (Supra)** by referring to the decision of the Supreme Court in the case of **State of Haryana v/s. Jai Singh [AIR 2003 SC 1696]**. The Court observed as under:—

*“we do not see how we can take a different view in the cases of furlough leave. **If remission in sentence can be denied as held by the Supreme Court on the ground of gravity of offences and that can form the basis of a valid classification, then, all the more in the case of furlough leave, we cannot take a different view. At this stage, Notification dated***

01.12.2015 was brought to our notice. By this Notification, Rule 4 was further amended to include offence of rape. In our opinion, the same reasoning as in the case of sub-rule 13 to Rule 4 would apply to cases of rape.”

In the case of **Jai Singh (Supra)**, the Apex Court discussed the validity of similar rules framed by the State of Haryana and held as under:—

“... it is clear that the gravity of the offence can form the basis of a valid classification, if the object of such classification is to grant or not to grant remission. Having come to the conclusion that the gravity of the offence can be the basis for a valid classification, we will now consider whether the offences excluded from the impugned notification can be said to be such offences which have been wrongly excluded from the benefit of remission. We notice that the convicts who have been excluded from the benefit of said notification, are those convicts who have been sentenced for offences of rape, dowry death, abduction and murder of a child below 14 years, offences coming under Sections 121 to 130 IPC, dacoity, robbery, etc. These are the offences for which the Code has prescribed the sentence of rigorous imprisonment extending up to life, therefore, from the very nature of the sentence which the offence entails,

*the said offences can be categorized as grave offences, therefore, they can be aptly classified as grave offences, which classification will be a valid classification for the purpose of deciding whether the persons who have committed such offences should be granted remission or not. **On this basis, we are of the opinion that the State Government having decided not to grant remission to these offenders/offences which carry life imprisonment, should not be granted remission, is justified in doing so.***

Similarly, the offences under the NDPS and the TADA Acts, apart from carrying heavy penal sentences are offences which could be termed as offences having serious adverse effect on the society, cognizance of which is required to be taken by the State while granting remission, therefore, they can also be classified as offences which should be kept out of the purview of remission. The offences enumerated in Sections 121 to 130 IPC are the offences against the State, though some of them may not be punishable with life imprisonment, still taking into consideration the nature of offence which undermines the security of the State, in our opinion, can be classified for exclusion from the benefit of remission.

Again the offences under the Foreigners Act, Passport Act, Official Secrets Act also being offences against the State, they can be classified as offences which will not be entitled to the benefit of remission. The

persons who have indulged in the breach of mandate of the Jail Manual can also be classified as the offenders who should not be granted the incentive of remission because of their conduct during the period of their conviction. Therefore, we are of the opinion that the offences excluded from the benefit of remission under the impugned notification have been properly classified which classification, in our opinion, is a valid classification for the purpose of making them ineligible for the grant of remission. ... To grant or not to grant is the power vested in the appropriate Government under Section 432 which the said Government can exercise either by granting remission to all convicts except those mentioned in Section 433A or by restricting the remission to a class of convicts provided such classification is valid. ...”

- 7. (a) Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 which is in existence in the State of Gujarat, reads:—**

“4. When prisoners shall not be granted furlough:—

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

- (1) *Habitual prisoners.*

- (2) *Prisoners convicted of offences under Sections 392 to 402 (both inclusive) of the Indian Penal Code.*
- (3) *Prisoners convicted of offence under the Bombay Prohibition Act, 1949.*
- (4) *Prisoners whose release is not recommended in Greater 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.*
- (6) *Prisoners whose conduct is in the opinion of the 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).*
- (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.*

(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 or furlough.”*

(b) As against this, vide notification dated 09th August, 1990, Government of Gujarat inserted sub-rule (11) to the afore-quoted Rule 4 which reads:—

“Prisoners convicted of offences under the Narcotic Drugs and Psychotropic Substances Act, 1985.”

8. Objects and Reasons for amending the rules:—

It is apparent that the Furlough and Parole Rules applicable in the State of Gujarat requires to be suitably amended so as to meet the prevailing situation in the State. It is a known fact that if a terrorist survives and is convicted, gang supporting

him would always take some revenge against the persons who have deposed against him because our criminal procedure and jurisprudence or human rights would not permit imposition of death penalty within short time.

Hence, it is necessary to lay down proper, unambiguous, clear rules for grant of furlough/parole, in case where convict is punished for heinous offences, such as, multiple murders, dacoity, terrorist crimes, kidnapping for ransom, kidnapping for human trafficking, smuggling or dealing in narcotic or psychotropic substances, person who has committed offence by throwing acid on the victim, and in case the person who has committed serious offence and is considered to be headstrong having political background or a person who is a threat to the society. For this purpose, Furlough and Parole Rules are required to be amended by adding appropriate rule so that convicts for the aforesaid offences may not be released on furlough or parole. The rules should be clear, specific and unambiguous so that there may be less litigation for this purpose.

9. Suggested rules:—

Hence, the rules should provide that in the following cases, furlough / parole shall not be granted at least for five years from the date of conviction:—

“Where a person is convicted for the offence of

- (1) multiple murders;*
- (2) dacoity;*
- (3) terrorist crimes;*
- (4) kidnapping for ransom;*
- (5) kidnapping for human trafficking;*
- (6) smuggling or dealing in narcotic or psychotropic substances;*
- (7) person who has committed offence by throwing acid on the victim;*
- (8) convicted for rape of minor child;*
- (9) convicted for rape and murder;*
- (10) who is sentenced for life imprisonment till death;*
- (11) who is involved in serious prison crime such as assault, outbreak of riot, mutiny or escape, instigating violation of prison discipline;*

- (12) *who in the opinion of police/prison authorities are likely to jump furlough;*
- (13) *whose immediate presence in society may be dangerous and may disturb public peace;*
- (14) *person who has committed serious offence and is considered to be headstrong having political background or a person who is a threat to the society;*
- (15) *Prisoners whose release on leave is likely to have repercussions elsewhere in the country;*
- (16) *Prisoners whose release on leave is likely to have repercussions during the period of code of conduct of local self Government, Legislature and Parliament elections.”*

Date : 03rd October, 2016

Place: Ahmedabad

JUSTICE M. B. SHAH
Former Judge, Supreme Court of India
AND
Chairman, Gujarat State Law Commission