

2

C/153

GOVERNMENT OF GUJARAT
HOME DEPARTMENT

Resolution No. ILK/822012/1859/J
Block No.2, Sardar Bhavan, Sachivalay, Gandhinagar.
Dated: 23rd January, 2014

Resolution:-

The State Government has constituted a committee headed by the Additional Chief Secretary (Home) for considering the policy and guidelines to be followed for the purpose of the State Remission and Premature Release of Prisoners. The Secretary, Legal Department and the Secretary, Legislative and Parliamentary Affairs Department were also one of the members of the said committee. The proceedings of the meeting and the opinion of the Legal Department in this regard, had been under consideration of Government of Gujarat.

2. After careful consideration, Government issues the following guidelines/policy for considering the cases of the State Remission and Premature Release of Prisoners.

(A) State Remission of Prisoners:

(i) The powers of the State Remission, Pardon and Commutation rest with H.E. the Governor under the Article 161 of the Constitution of India. Only convicted prisoners are eligible for the state remission. Therefore, the remission under Article 161 of the Constitution of India shall not be applicable to the under trial prisoners.

(ii) Whenever, the remission orders are issued, the birth date of prisoners shall be verified by the concerned Jail Authorities with the authentic original documents e.g. the original Birth Certificate/ the School leaving Certificate/ Passport or other document as may be recognized by the Government. The Jail Authorities will get the said documents from the prisoners of the various Prisons of the State.

The Director General of Police, Gujarat State will issue necessary guidelines for registering the actual birth date of the accused while filing the charge sheet in the court on the basis of authentic original document of Birth Date.

(iii) The Prisoners who are convicted for the crimes as mentioned in Annexure-I shall not be considered for the State Remission. Moreover, the State Government will not consider those cases where the Appropriate Authority for granting remission of Prisoners is the Central Government.

(B) Premature Release of Prisoners:

Government for good and valid reasons can suspend the execution of a sentence or remit the whole or part of it.

of its powers under Section 432 of the Code of Criminal Procedure, 1973. Recently the Hon. Supreme Court in its judgment dated 20/11/2012 in Criminal Appeal(s) No.490-491 of 2011 has observed that the said section statutorily empowers the Appropriate Government with some inherent procedural and substantive checks on the arbitrary exercise of this power. Further the Supreme Court has observed in the said judgment as under,

Premature Release

(i) Para-63 An exercise of power by the appropriate Government under sub-section (1) of Section 432 of the Code of Criminal Procedure, 1973 cannot be suo motu for the simple reason that this sub-section is only an enabling provision. The appropriate Government is enabled to "override" a judicially pronounced sentence, subject to the fulfillment of certain conditions. Those conditions are found either in the Jail Manual or in statutory rules. Sub-section (1) of Section 432 of the Code of Criminal Procedure, 1973 cannot be read to enable the appropriate Government to "further override" the judicial pronouncement over and above what is permitted by the Jail Manual or the statutory rules. The process of granting "additional" remission under this Section is set into motion in a case only through an application for remission by the convict or on his behalf. On such an application being made, the appropriate Government is required to approach the presiding judge of the Court before or by which the conviction was made or confirmed to opine (with reasons) whether the application should be granted or refused. Thereafter, the appropriate Government may take a decision on the remission application and pass orders granting remission subject to some conditions, or refusing remission. Apart from anything else, this statutory procedure seems quite reasonable in as much as there is an application of mind to the issue of grant of remission. It also eliminates "discretionary" or enmasse release of convicts on "festive" occasions since each release requires a case-by-case basis scrutiny.

(ii) Para-65 For exercising the power of remission to a life convict, the Code of Criminal Procedure, 1973 places not only a procedural check as mentioned above, but also a substantive check. This check is through Section 433-A of the Code of Criminal Procedure, 1973 which provides that when the remission of a sentence is granted in a capital offence, the convict must serve at least fourteen years of imprisonment.

(iii) Para-74 There is a misconception that a prisoner serving a life sentence has an indefeasible right to release on completion of either fourteen years or twenty years imprisonment. The prisoner has no such right. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate Government under Section 432 of the Code of Criminal Procedure, 1973

3

c/155

the substantive check in Section 433-A of the Code of Criminal Procedure, 1973.

(iv) Para-75 In a sense, therefore, the application of Section 432 of the Code of Criminal Procedure, 1973 to a convict is limited. A convict serving a definite term of imprisonment is entitled to earn a period of remission or even be awarded a period of remission under a statutory rule framed by the appropriate Government or under the Jail Manual. This period is then offset against the term of punishment given to him. In such an event, if he has undergone the requisite period of incarceration, his release is automatic and Section 432 of the Code of Criminal Procedure, 1973 will not even come into play. This Section will come into play only if the convict is to be given an "additional" period of remission for his release, that is, a period in addition to what he has earned or has been awarded under the Jail Manual or the statutory rules.

(v) Para-77 Therefore, Section 432 of the Code of Criminal Procedure, 1973 has application only in two situations: (1) Where a convict is to be given "additional" remission or remission for a period over and above the period that he is entitled to or he is awarded under a statutory rule framed by the appropriate Government or under the Jail Manual. (2) Where a convict is sentenced to life imprisonment, which is for an indefinite period, subject to procedural and substantive checks.

At present, the procedures and checks regarding remission by the appropriate Government are given in the Jail Manual. However, it requires certain changes to comply the observations of the Hon. Supreme Court. It requires changing the formation of the Jail Advisory Committee and also the procedure to be followed by the Advisory Committee.

In view of the proceedings of the committee mentioned hereinabove in Para-1 and the aforesaid judgment of the Hon. Supreme Court, it has been decided to form a revised Jail Advisory Committee and also the revised procedure to be followed by the said Advisory Committee as under superseding the previous all the provisions made in this regard.

Formation of the Jail Advisory Committee

- | | |
|---|------------------|
| - District Magistrate (only in district area) or
Chief Metropolitan Magistrate | Chairman |
| - The District Sessions Judge | Member |
| - The Superintendent of Police or
Commissioner of Police of the District/City | Member |
| - District Social Welfare Officer | Member |
| - Two Local Members | Member |
| - The concerned Jail Superintendent | Member Secretary |

Note:

- (i) It is observed by the Supreme Court in Criminal Appeal No.490-491/2011 that the appropriate Government is required to approach the Presiding Judge of the Court before or by which the conviction was made or confirmed to opine (with reasons) whether the application for remission should be granted or refused. Therefore, the opinion of the Sessions Judge or equivalent Court with reasons is compulsory.
- (ii) If the conviction is made or confirmed by the Hon. High Court / Hon. Supreme Court (appellant court), the opinion of the appellant court is compulsory.
- (iii) Government will appoint two local members for three years in the Jail Advisory Committee.

Procedure to be followed by the Jail Advisory Committee:

The Jail Advisory Committee will follow the guidelines as stated here under.

- Guidelines*
- (i) The quorum of the Jail Advisory Committee shall be minimum of 2/3rd members.
 - (ii) The presence of the District Magistrate as Chairman and also the District Sessions Judge or Chief Metropolitan Magistrate as Chairman is compulsory.
 - (iii) The District Magistrate or Chief Metropolitan Magistrate will be the Chairman and concerned Jail Superintendent will be the Member Secretary of the Jail Advisory Committee.
 - (iv) The meeting of the Jail Advisory Committee shall be convened in every six month.
 - (v) The Jail Advisory Committee will consider the cases of prisoners convicted for life imprisonment after the completion of fourteen years of imprisonment only.
 - (vi) The process of granting "additional" remission under Section 432 of the Code of Criminal Procedure, 1973 is set into motion in case only through an application for remission by the convict or on his behalf. The convict can apply before completing 14 years. On such an application being made, the concerned Jail Superintendent is required to approach the Presiding Judge of the Court or any equivalent Court and Appellant Courts by which the conviction was made or confirmed to opine (with reasons) whether the application should be granted or refused. Such opinion may be obtained before the prisoner completes fourteen years of imprisonment but after receiving an application from the convict. It is also required to obtain the opinion of the concerned District Magistrate and also the concerned Police Authorities (with detailed reasons) in advance after receiving an application from the convict.

- 01127
- (vii) The Jail Advisory Committee shall consider the seriousness of crime, the conduct in the Jail, the status of co-accused, the period of absconding of the prisoner and the sentences in the Jail and also other cognizable offences during the period of Parole/Furlough and also period of absconding.
- (viii) The Jail Advisory Committee will also consider the following guidelines issued by the Hon'ble Supreme Court in the case of Laxman Naskar V/s. State of Bengal reported in AIR 2000 SC 2762.
- (a) Whether offence is an individual act of crime without affecting the society at large?
 - (b) Whether there is any fruitful purpose of confining of this convict any more?
 - (c) Whether there is any chance of future reoccurrence of committing crime?
 - (d) Whether the convict has lost his potential in committing crime?
 - (e) Socio-economic condition of the convict family?
- (ix) The Jail Advisory Committee will also consider if there is any threat to the state or the National Security at large. In such cases the Jail Advisory Committee will give negative opinion with detailed reasons taking into account the Constitutional right.
- (x) The Jail Advisory Committee will consider the opinion of the judge as mentioned above. The committee will also consider the opinion of the District Magistrate and the Police Authorities. Both are the members of the Advisory Committee, therefore, both should stick to their earlier opinion. If the District Magistrate and also the Police Authorities want to change their earlier opinion, in the meeting of Advisory Committee, in such cases the detailed reasons/justification must be noted in the proceedings.
- (xi) If the Government rejects the proposal for the Premature Release, in such cases the proposal will be reconsidered **only after one year** taking into account all the factors stated herein above.
- (xii) In addition to above, the class of prisoners as shown at Annexure-I shall not be considered for the premature release by the Jail Advisory Committee.
- (xiii) The Jail Advisory Committee will take into account every point mentioned above and give its recommendation with detailed reasons. The Inspector General of Prisons will send the proposal of premature release of the prisoners after receiving the recommendations of the Jail Advisory Committee only in the prescribed Checklist as per Annexure-II to the Government

(C) Premature Release in case of Prisoners transferred to other State:

In the case of a prisoner who is transferred from the State of Gujarat to other State, (under the provisions of Transfer of Prisoners Act, 1900) the decision

of premature release will be taken by the Government of Gujarat according to the provision of Section 432 of Criminal Procedure Code (2 of 1974) as the power to remit sentence under Section 432 of the Code of Criminal Procedure is conferred upon the appropriate Government.

By order and in the name of the Governor of Gujarat



(Dilip G. Soni)

Deputy Secretary to Government
Home Department

TO,

1. Secretary to H.E. Governor of Gujarat, Raj Bhavan, Gandhinagar **(By Letter)**
2. Principle Secretary to Hon. Chief Minister, Sachivalay, Gandhinagar.
3. Personal Secretary to Hon. Minister of State (Home), Sachivalay, Gandhinagar.
4. The Director General & I.G. of Police, Gujarat State, Police Bhavan, Gandhinagar
5. The Registrar, Gujarat High Court, Sola, Ahmedabad **(By letter)**
6. The Chief Metropolitan Magistrate, Ahmedabad.
7. Inspector General of Prisons, Gujarat State, Jail Bhavan, Ahmedabad
8. All Commissioners of Police
9. All District Magistrates & Collectors
10. All District Sessions Judge.
11. All Superintendents of Police
12. All Jail Superintendents.
13. All Departments of Sachivalay, Gandhinagar
14. All Heads of the Department, Home Department, Sachivalay, Gandhinagar
15. All Officers of Home Department, Sachivalay, Gandhinagar
16. Section Officer Select File
17. Deputy Section Officer Select File
18. Select File

2153

Annexure-I

The following class of prisoners SHALL NOT be granted for State Remission as well as for Premature Release.

- (i) Such prisoners who have been convicted for a crime -
- (a) which was investigated by Delhi Special Police Establishment constituted under Delhi Special Police Establishment Act, 1946 (No.25 of 1946)
 - (b) which involved the misappropriation of or destruction of or damage to any property belonging to the Central Government.
 - (c) which was committed by a person in the Service of Central Government while acting or purporting to act in the discharge of his official duties.

(ii) Such prisoners -

- (a) who have been categorized as habitual offenders under the prevailing rules by the competent authority.
- (b) who have been ordered by a Magistrate to furnish security and are undergoing imprisonment for not furnishing such security.
- (c) who are undergoing sentence in default of payment of fine.

(iii) The Prisoners who are convicted for any offence under the following

Acts:-

- (1) The Drugs & Cosmetics Act, 1940 (No.23 of 1940).
- (2) The Foreign Exchange Regulation Act, 1973 (No.46 of 1973)
- (3) The Employees Provident Funds and Miscellaneous Provisions Act, 1952 (No.19 of 1952).
- (4) The Prevention of Food Adulteration Act, 1954 (No.57 of 1954).
- (5) The Essential Commodities Act, 1955 (No.10 of 1955).
- (6) The Protection of Civil Rights Act, 1955 (No.22 of 1955).
- (7) The Customs Act, 1962 (No.52 of 1962).
- (8) The Excise Act, 1955.
- (9) The Narcotic Drugs and Psychotropic Substances Act, 1985 (No.61 of 1985).
- (10) The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (No.52 of 1974).
- (11) The Representation of the Peoples Act, 1951 (No.43 of 1951).
- (12) The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1980 (No.46 of 1980).
- (13) The National Security Act, 1980 (No.65 of 1980).

(iv) (a) A Prisoner or prisoners sentenced for group murder of two or more persons.

(b) Absconders, including those who are absconding from Parole/Furlough, bail/ interim bail, police custody or jail and those who have late surrendered in jail from Parole/Furlough, interim bail after three days of the stipulated period.

(c) Life imprisonment prisoners convicted under TADA or POTA. ✓

- (c) Prisoners convicted for murder with rape or gang rape.
 - (e) Prisoners sentenced under Section 489 of the IPC.
 - (f) Such Prisoners who have been convicted for life imprisonment under Section 302 IPC in connection with Dowry/cruelty cases i.e. Offences under Section 306, 304-B, 498-A etc. of IPC
 - (g) Prisoners convicted for any offence against any law relating to a matter to which the executive power of the State does not extend.
 - (h) Prisoners sentenced to two or more sentences of life imprisonment for two or more separate cases of murder.
 - (i) Prisoners undergoing life sentence, who are having any other criminal case(s) pending against them either with the police for investigation or in the court for trial.
- (V)(a) The prisoners who are notorious, dangerous and involved in gang wars or interstate crime or offences having international ramification,
- (b) The prisoners who are involved in the offences falling under section 392 to 402 of the Indian Penal Code,
- (c) The prisoners who are involved in the serious offences under the Arms Act, 1959, the Explosive Substances Act, 1908, or under the Unlawful Activities(Prevention) Amendment Act, 2008.
- (d) The prisoners who are involved in activities of spying or escaping from Jail,
- (e) The prisoners belonging to banned organizations.
- (VI) Wherever, the Appropriate Authority is Central Government, in those cases, the State Government will not consider for granting the State Remission and Premature Release of the convict Prisoners.

laws
P-R

.....

Annexure-II

જેલોના ઇન્સ્પેક્ટર જનરલશ્રી દ્વારા સરકારશ્રીમાં વહેલી જલમુક્તિના કિસ્સામાં નિર્ણય માટે મોકલવાની થતી દરખાસ્તની વિગતો દર્શાવતું ચેકલિસ્ટ:

ભાગ-૧

ક્રમ	મુદ્દો	વિગત (દરખાસ્તના પાના નં. સહિત)
૧	ક્રિમીનલ પ્રોસીજર કોડની કલમ ૪૩૨ મુજબ વહેલી જલમુક્તિ માટે અરજદાર કેદી કે તેના વતી કરવામાં આવેલ અરજીની વિગત (તારીખ સાથે)	
૨	જે જિલ્લામાં કેદીએ ગુનો કરેલ હોય તે જિલ્લાના સેશન્સ જજશ્રીનો કારણો સહિતનો અભિપ્રાય.	
૩	અમદાવાદ શહેર વિસ્તારમાં કેદીએ ગુનો કરેલ હોય તો સંબંધિત પ્રિસાઇડીંગ જજશ્રીનો કારણો સહિતનો અભિપ્રાય.	
૪	એપેલેટ કોર્ટના કારણો સહિતના અભિપ્રાયની વિગત (દાખલ થયેલ અપીલના કિસ્સામાં)	
૫	જે જિલ્લા/શહેર વિસ્તારમાં કેદીએ ગુનો કરેલ હોય તે જિલ્લા/શહેરના પોલીસ અધિક્ષક/કમિશ્નરશ્રીનો કારણો સહિતનો અભિપ્રાય	
૬	સંબંધિત જેલના અધિક્ષકશ્રીનો અભિપ્રાય કારણો સહિત	
૭	જેલ સલાહકાર સમિતિનો કારણો સહિતનો અભિપ્રાય.	
૮	જેલોના ઇન્સ્પેક્ટર જનરલશ્રીનો અભિપ્રાય કારણો સહિત	

ભાગ-૨

ક્રમ	વિગત	વિગત (દરખાસ્તના પાના નં. સહિત)
૧	કેદીનું નામ, કેદી નંબર સાથે	
૨	કેદીની જન્મ તારીખ(જન્મ તારીખના પુરાવા સાથે)	
૩	કેદીની હાલની ઉંમર	
૪	હાલમાં સજા ભોગવી રહેલ જેલનું નામ	
૫	કેદીને હાલમાં રાખવામાં આવેલ જેલ તેના વર્ગીકરણ મુજબ છે કે કેમ? જો, ના તો તેના કારણો તથા હુકમની વિગત(નકલ સાથે)	
૬	સજાની તારીખ	
૭	સજા કરેલ કોર્ટનું નામ	
૮	સેટ ઓફ સહિત ૧૪ વર્ષની સજા પૂર્ણ થવાની તારીખ	
૯	અપીલ થયેલ હોય તો તેનું પરિણામ (કોર્ટના નામ સહિત)	
૧૦	ભોગવેલ વચગાળાના જામીન(સમયગાળા સાથે)	
૧૧	ભોગવેલ કુલ ફર્લો (સમયગાળા સાથે)	
૧૨	ભોગવેલ કુલ પેરોલ (સમયગાળા સાથે)	
૧૩	વચગાળાના જામીન/ફર્લો/પેરોલ પરથી ફરાર થયાની વિગત તથા ફરાર દરમિયાન કોઈ ગુનો આચરવામાં આવેલ હોય તો તેની વિગત.	
૧૪	જેલ શિક્ષાની વિગત	
૧૫	સહ ગુનેગારની છેલ્લી પરિસ્થિતિ દર્શાવતી વિગત (વહેલી જેલમુક્તિ મળવાપાત્ર સંમતિ તારીખ તથા જેલના નામ સાથે)	
૧૬	ગુનાની ટૂંકી વિગત:	
૧૭	જેલ જીવન દરમિયાન કેદીએ કરેલ કામગીરીની વિગત	
૧૮	કેદીના અન્ય ગુનાહિત ઇતિહાસની વિગત (કેસની અદ્યતન પરિસ્થિતિ સાથે)	

EXPRESS LETTER

Shri M. J. DANI, M.A., Under Secretary to the Government,
of Bombay, Home Department

To
The DELECTOR GENERAL OF PRISONS STATE OF BOMBAY,
247, Fort.

The COMMISSIONER, Rajkot Division, Rajkot,
Ahmedabad Division, Ahmedabad,
Bombay Division, Bombay,
Poona Division, Poona,
Nagpur Division, Nagpur,
Aurangabad Division, Aurangabad,

ALL THE DISTRICT MAGISTRATES (the Collectors and
Additional District Magistrates in the Districts of
Hyderabad Area).

ALL THE DISTRICT SUPERINTENDENTS OF POLICE,
The COMMISSIONER OF POLICE, Poona.

ALL THE SUPERINTENDENTS OF PRISONS

Subject: The Prisons (Bombay Furlough and Parole)
Rules, 1959.

No. MIS. 5157/74076 (XXIV)-IV. 2 Dated the 20th May 1959.

The Prisons and Civil Jails (Bombay Extension, Modification and
Amendment) Act, 1954 (Bombay Act XXIII of 1954) has been published
in the Bombay Government Gazette, Extraordinary, Part IV, dated 27th
May 1954, under sub-section (2) of section 1 of the said Act shall
come into force on such date as the State Government may, by notification
in the Official Gazette, appoint. The date date on which that
Act shall come into force has not yet been decided by the Government
and it will be decided and notified in the Gazette and I also communi-
cated to you separately.

2. In the said Act coming into force:-

(a) the Hyderabad Prisons Act, 1954, in its application to the
Hyderabad Area of the State of Bombay.

(b) the Prisons Act, 1949, as adopted and applied to the State
of Bombay (Application of Central and Bombay Acts) Ordinance,
1954 in its application to the State of Bombay.

(c) Part VI A, inserted in the Prisons Act, 1949, by the Central
Convicts and Borstal Prisoners (Amendment) Act, 1954, and the
Central Prisons and Borstal Prisons (Amendment) Repealing Act,
1954 in its application to the Vidarbha region of the State.

that shall repeal and the Prisons Act, 1949, as in force at present
in the present State of Bombay (excluding the transferred
territories) amended by the Bombay Act XXIII of 1954 shall
be applied in the force throughout the State of Bombay uniformly.

3. As to the amendments that will be effected in the Prisons Act,
1949, as amended in section 3 of the Bombay Act XXIII of 1954
which in clause (5), the following shall be substituted,
namely:-

(3) for the word of marks, the suspension of sentence and
commencement of term of sentences, and the grant of release on
parole, subject to and determining the conditions on which and
the manner in which the sentences may be suspended, commuted
and the prisoners may be released on parole or release.

4. In all the present officers, officers, and other
members of the staff of this State, in the service of the
Government of Bombay, in which, in fact, the conditions of service
and other matters are not the same as those of the
Government of Bombay, that will be worked out by the
Government of Bombay.

Ruler

Government has decided to frame parol and furlough rules which shall be applicable throughout the State uniformly. A copy of the draft rules proposed to be promulgated is enclosed. The exact date from which these rules will come into force will, however, be communicated to you in due course. Till such time, the existing practices will continue.

It will be noticed that under the new rules proposed to be promulgated, the Inspector General of Prisons or the Deputy Inspector General of Prisons (Head Quarters), when the former is out of Head-Quarters shall be the authority competent to grant furlough to convicted prisoners. So far as grant of parole is concerned the Divisional Commissioners or the Assistant Commissioners, when the former are out of Headquarters, shall be the authorities competent to grant parole to prisoners except in the cases covered by draft Rule 18(1).

The Inspector General of Prisons and the Divisional Commissioners are therefore, requested to make all the preliminary arrangements (such as getting acquainted with the revised procedure, having the requisite number of copies of the various forms with which they may respectively be concerned) and to keep in readiness to start functioning according to the rules as soon as they may be promulgated.

The attention of the District Magistrates (the Collectors and Additional District Magistrates in the Hyderabad area), the District Superintendents of Police and the Commissioner of Police, Bombay, is specifically invited to the provisions of rules 8, 14, 22, and 27, of the draft rules accompanying this letter and they are requested to bring the contents thereof to the notice of officers subordinate to them.

The attention of the District Magistrates (the Collectors and Additional District Magistrates in the Hyderabad area), the District Superintendents of Police and the Commissioner of Police, Bombay, is also invited to the various orders issued by Government from time to time, regarding prompt disposal of applications or requests for release of prisoners on parole especially—

(1) Government Circular, Home Department, No. 4428/3, dated 25th March 1950;

(2) Government Circular, Home Department, No. 4428/3, dated 31st January 1951,

(3) Government Circular, Home Department, No. 4428/3, dated 26th April 1954, and

(4) Government Circular, Home Department, No. PAR. 2657/18471 IV, dated 2nd May, 1959,

copies of which are enclosed herewith. These orders should be followed by them subject to the change that instead of Government, the Divisional Commissioner concerned will be the authority competent to grant parole to prisoners except in the cases covered by draft Rule 18(1), after the revised rules are brought into force.

The Inspector General of Prisons is also requested to send to the officers concerned in the new areas, copies of orders, for a general nature which he might have issued in connection with the disposal of applications for grant of furlough.

The District Superintendents of Prisons are also requested to note for prompt disposal with regard to the authorities competent to grant parole and furlough and the revised procedure for dealing with applications containing such requests.

The date from which the accompanying rules will come into force will be communicated in due course. For the present, the existing practices should be continued.

M. L. OAZI
Under Secretary to the Government of India

DRAFT NOTIFICATION.

Home Department.

Sacnivalaya, Bombay-1.

1959.
1951.

Prisons Act, 1894.

No. M.S. 5157/74036 (XXIV)-IV--In exercise of the powers conferred by clauses (3) and (23) of section 59 of the Prisons Act, 1894 (IX of 1894), in its application to the State of Bombay, the Government of Bombay hereby makes the following rules, namely:—

(1) Short title and extent.—(a) These rules may be called the Prisons Bombay Furlough and Parole Rules, 1959.

(2) They extend to the whole of the State of Bombay.

RULES REGARDING THE GRANT OF FURLOUGH.

Sanctioning Authority.—The Inspector-General of Prisons or the Deputy Inspector-General of Prisons (head-quarters), when the former is out of head-quarters (hereinafter referred to as "the Sanctioning Authority"), shall, subject to these rules, be competent to grant furlough to convicted prisoners as hereinafter mentioned.

(1) 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 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.

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.

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 thereby reduced to a term not exceeding 5 years, he shall thereafter be eligible for release every year in accordance with sub-rule (1) instead of every two years under sub-rule (2).

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 two or more sentences be concurrent.

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.

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.

Note 5.—An order sanctioning the release of a prisoner on furlough shall cease to be valid if not given effect to within a period of two months of the date thereof.

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

(a) Habitual prisoners;

(b) Prisoners convicted of offences under sections 2 to 23 (both inclusive) of the Indian Penal Code.

(c) Prisoners convicted of offences under the Bombay Prohibition Act, 1949.

(d) 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 order and tranquillity.

Furlough

Rules

1/1/59

Comd/12
H.D. 1/1/59
D.P. 2/1/59

Furlough

- 1. Prisoners who, in the opinion of the Superintendent of Prisons, are not sufficiently reformed to be set at liberty.
- 2. Prisoners whose conduct in the opinion of the Superintendent at the Prison is not satisfactory enough.
- 3. Prisoners confined in the Baramulla Special Prison.
- 4. Prisoners convicted of offences of violence against persons or property committed for political motives, unless the prior consent of the State Government to such release is obtained.
- 5. A prisoner in class of prisoners in which the Government has directed that the prisoner shall not be released or that the case should be referred to it for orders.
- 6. 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.

7. Furlough not to be granted after return from parole.—Ordinarily furlough shall not be granted to a prisoner within a period of six months from the date of his return from parole.

8. Furlough not to be granted without surety.—A prisoner shall not be granted furlough unless he has a relative willing to receive him while on furlough and ready to enter into a surety bond in Form A appended to these rules for such amount as may be fixed by the Sanctioning Authority.

9. Prisoners to give personal bond before release on furlough.—Every prisoner applying for release on furlough shall be required to give a personal bond of the required amount in Form B appended to these rules.

10. How applications for (para 9) furlough should be dealt with.—(a) Two months before a prisoner becomes eligible to be considered for release on furlough, the Superintendent of Prisons shall inform the prisoner accordingly and the prisoner shall be considered for such release. He shall make an application (in Form C) to the Inspector-in-charge of Prisons through the Superintendent of Prisons stating clearly his name and full address of the place where he wishes to spend the out-of-prison period. He shall also state whether he is in a position to bear the expenses on the journey both ways or either way and if not, the amount of expenses that may be required by him for such journey.

(b) On receipt of the application under sub-rule (1), the Superintendent of Prisons shall, unless the prisoner is prima facie not entitled to release on furlough forward it expeditiously to the District Magistrate concerned or to the District Superintendent of Police of that District or to the Commissioner of Police, Greater Bombay, as the case may be, with such remarks as may be necessary. A copy of this communication together with the application in Form C shall be sent by the Superintendent of Prisons to the Inspector-General of Prisons and such communication shall be filed in the State.

- (1) the amount of money the prisoner has to his credit including the amount he may have earned in prison,
- (2) the amount of money required for the journey both ways,
- (3) the amount of surety the Superintendent considers proper,
- (4) the name of the village, taluka and district and the District in which the prisoner proposes to spend his furlough,
- (5) the name of the District from which he hails,
- (6) the name of the District in which he was convicted.

The District Magistrate or the Commissioner of Police Greater Bombay, as the case may be, should be requested to furnish along with his opinion, the following information regarding the relatives of the prisoner with whom he intends to stay while on furlough:—

- (1) Their relationship with the prisoner concerned,
- (2) Whether such relatives are willing to keep the prisoner while on furlough,
- (3) Whether they (or relatives) are willing to enter into surety bond.

Rules

(2) The District Magistrate or the Commissioner of Police, Greater Bombay, or the one may be, shall thereafter forward the application to the Inspector General of Prisons together with his recommendations.

(4) The District Superintendent of Police shall, when forwarding the application to the District Magistrate concerned and the Commissioner of Police, Greater Bombay shall, before forwarding the application to the Inspector General of Prisons, cause inquiries to be made regarding the prisoner's statement, if any, that he is not able to bear the expenses of the journey both ways or either way, as the case may be, and make recommendations accordingly.

(3) If furlough is not recommended adequate reasons therefore shall be given.

(6) If on receipt of the application together with the recommendations under sub-section (2), the Sanctioning Authority considering that furlough be granted, it shall make an order for the release of the prisoner on furlough on such conditions as may be specified in the order.

✓ 5. Fresh application for furlough.—A prisoner may, if he so desires, make a fresh application for furlough six months after the rejection of his previous application.

6. Conditions of release.—The Sanctioning Authority shall grant furlough to a prisoner subject to his executing a personal bond or giving cash security in lieu of a bond, and to be subject to a surety amounting to a bond, in Form 6 appended to these rules, if so required. The release may further be subject to all or any of the following conditions:—

(1) that the said prisoner shall reside at Taluka _____ District/Greater Bombay during the period of release and shall not go beyond the limits of the said District/Greater Bombay without the permission of the District Magistrate, _____/Commissioner of Police, Greater Bombay, or the District Magistrate/Commissioner of Police may appoint in this behalf.

(2) that the said prisoner shall be of good behaviour and shall not commit any offence punishable by or under any law in force in India,

(3) that the said prisoner shall associate with persons of good character and lead a decent life,

(4) that the said prisoner shall, in case he desires to change his religion during the period of furlough, give a minimum of seven days' notice in writing to the said District Magistrate/Commissioner of Police and also the Superintendent of the Prison from whom he has been released, about such intention, and he shall also furnish, along with information regarding the new religion and the new name, if any, which he proposes to adopt,

(5) that the said prisoner will report himself to the Superintendent of the Prison from which he was released on the expiry of the period of furlough,

(6) that the said prisoner will report once a day to the Officer in-charge of the _____ Police Station during the period of furlough.

that the said prisoner shall, immediately on arrival at the place mentioned in (1) above, report at the Police Station nearest to the said place, and thereafter*

11. Declaration before release.—Before releasing a prisoner on furlough, a declaration as under shall be taken from him on the release or for itself:—

"I hereby accept and agree to abide by the conditions of the release order and I acknowledge that should I fail to fulfil these conditions or any portion of them, the Sanctioning Authority may revoke the order of release and pocket the amount of money furnished by me, and I shall be liable to be punished by any Police Officer without warrant and remanded to custody. The unsatisfied portion of my sentence, and I further acknowledge that should I fail to fulfil any condition or any portion of them, I am liable to be punished as provided with

* To be inserted in appropriate cases and with such modifications as the Sanctioning Authority may require.

imprisonment for a term which may extend to two years or with fine which may extend to Rs. 1000, or with both, under section 51-B of the Prisons Act, 1900, as applicable to the State of Bombay."

12. *Prisoner's liability to bear journey expenses.*—When a prisoner is released on furlough, the cost of his journey both ways shall be borne by the prisoner concerned:

Provided that, if in the opinion of the Sanctioning Authority, the Prisoner is not able to bear the expenses of journey both ways or either way, as the case may be, the Sanctioning Authority may direct that the whole or any portion of such expenses be borne by the State Government.

13. *Extension of the period of furlough.*—Notwithstanding anything contained in the foregoing rules, the Sanctioning Authority may, on the application of a prisoner or otherwise, by an order in writing extend the period of furlough for such further period as may be specified in such order on the same conditions on which the prisoner was originally granted furlough or on such other conditions as the Sanctioning Authority may determine.

14. *Intimation of release and of non-surrender of Prisoner.*—(1) Whenever any prisoner is released on furlough an intimation of his release on furlough shall forthwith be given by the Superintendent of Prison:

(a) to the Inspector General of Prisons.

(b) to the District Magistrate and the District Superintendent of Police of the District in which the prisoner intends or agreed to spend his furlough and if the prisoner intends or agreed to spend his furlough in Greater Bombay, to the Commissioner of Police;

(c) to the District Magistrate and the District Superintendent of Police of the District in which the prisoner was convicted and if the prisoner was convicted in Greater Bombay, to the Commissioner of Police;

(d) if the prisoner belongs to this State, to the District Magistrate and the District Superintendent of Police of the District from which the prisoner hails and if the prisoner hails from Greater Bombay, to the Commissioner of Police.

(2) Where a prisoner does not surrender himself to the prison authorities after the expiry of the period of furlough, the Sanctioning Authority may, if it is satisfied that any of the conditions on which the furlough was granted has not been fulfilled, cancel its order granting such furlough. An intimation regarding such cancellation shall forthwith be given, by the Superintendent of Prisons to the Officers specified in clauses (b), (c) and (d) of sub-rule (1). Upon such intimation, the police authorities may arrest the prisoner, if at large, and remand him to undergo the unexpired portion of his sentence.

15. *Release order inoperative on a Prisoner's surrender to the prison authorities.*—As soon as a prisoner released on furlough surrenders himself to the prison authorities, his order of release shall become inoperative. Where, therefore, a prisoner who is released on furlough has applied for the extension of the period of furlough and before his application has been sanctioned surrenders himself to the prison authorities, he shall not be released after such surrender without obtaining a fresh order from the Sanctioning Authority.

16. *Furlough to be counted as remission of sentence.*—The furlough period shall be counted as a remission of sentence:

Provided that where any furlough period has been extended under Note 3 below rule 8 or under rule 13, the period of extension shall not be counted as a remission of sentence.

17. *No legal right to furlough.*—Nothing in these rules shall be construed as conferring a legal right on a prisoner to claim release on furlough.

7

RULES REGARDING THE GRANT OF PAROLE.

18. Authorities competent to sanction parole.—The authority competent to sanction release of a convicted prisoner on parole (hereafter referred to as "the Competent Authority") shall be:—

- (a) the State Government in the following cases:—
 - (i) prisoners convicted by Courts situated outside the State of Bombay,
 - (ii) prisoners convicted of political offences,
 - (iii) any other case or class of cases wherein the State Government has directed that the case or specified class of cases be referred to it for orders.
- (b) the Divisional Commissioner or the Assistant Commissioner, when the former is out of head quarters, of the Division in which the prisoner is lodged, in other cases.

law

*See in G.P.
D.C. & A. in the*

19. When a prisoner may be released on parole.—A prisoner may be released on parole for such period as the Competent Authority referred to in rule 18 in its discretion may order, in cases of temporary illness or death of any member of the prisoner's family or of his nearest relative or for any other sufficient cause.

20. Parole not to be counted as remission of sentence.—The period spent on parole shall not count as remission of the sentence.

21. Application for grant of parole.—A prisoner may be granted parole either on his own application or on an application made by his relative, a friend, or legal adviser.

22. Application for parole how to be dealt with.—(1) Any prisoner desiring to be released on parole shall ordinarily submit his application (in triplicate in Form D appended to these rules) to the Superintendent of Prisons who shall endorse his remarks thereon and submit one copy first to the Competent Authority along with the nominal roll of the prisoner and thereafter to the District Superintendent of Police of the district in which the prisoner proposes to spend his parole period and to the District Magistrate of Police if such place is in Greater Bombay.

Note.—Prisoners who apply for parole on false grounds or who violate the conditions of parole or commit breach of any of the conditions of parole are liable to be punished under section 51-B of the Prisons Act, 1949, as applied to the State of Bombay.

(2) The District Superintendent of Police concerned or the District Magistrate of Police, Bombay, as the case may be, shall immediately make enquiries to ascertain whether the grounds or grounds on which parole is sought are genuine and submit immediately his report to the Competent Authority, mentioning in and Form D recommendations the grant of parole and also whether there is a likelihood of breach of parole if the prisoner is released on parole.

23. Sanction may be made on receipt of application.—On receipt of an application for parole, the Competent Authority may make such enquiries as it considers necessary and may make orders as to conditions. If the Competent Authority considers that there is no objection to release the prisoner concerned on parole it shall make an order for his release on parole.

24. Conditions subject to which prisoners may be granted parole.—The Competent Authority may grant parole to a prisoner subject to his execution of a surety bond and a personal bond in Form A and B respectively and to observe all or any of the conditions mentioned therein and also subject to such other conditions, if any, as may be specified by the Competent Authority.

25. Prisoners who are convicted of serious offences are not eligible for parole.—Prisoners who are convicted of serious offences are not eligible for parole and shall be included in the parole order directing the prisoner to report at the Police Station nearest to the place where he stands to spend his parole period on his reaching such station and there to cause or cause a check or such interview as may be considered expedient.

Provided further that when a prisoner applies for parole for the purpose of appearing at an examination he will not be eligible to be released on parole unless the Inspector General of Prisons has passed an order permitting him to appear at such examination.

25. *Extension of the period of parole.*—The Competent Authority may, on the application of the prisoner or otherwise, by an order in writing, extend the period of parole for such further period or periods as may be specified in such order on the same conditions on which the prisoner was originally granted parole or on such other condition as the Competent Authority may determine.

26. *Parole order ineffective on prisoner's surrender.*—As soon as a prisoner released on parole surrenders to the Prison Authority, his original order of release will be inoperative. Where, therefore, a prisoner who is released on parole has applied for the extension of the period of parole and before his application has been sanctioned surrenders himself to the Prison Authority, he shall not be released after such surrender without obtaining a fresh release order passed by the Competent Authority.

27. *Intimation of release and of non-surrender of a prisoner.*—(1) Whenever any prisoner is released on parole, an intimation of his release on parole shall forthwith be given by the Superintendent of Prison to the authority which granted him parole and copies thereof shall also be sent—

(a) to the Inspector General of Prisons,

(b) to the District Magistrate and the District Superintendent of Police of the District in which the prisoner intends to spend his parole and if the prisoner intends to spend his parole in Greater Bombay, to the Commissioner of Police.

(2) Where a prisoner does not surrender himself to the prison authorities after the expiry of the period of parole, the Competent Authority may if satisfied that any of the conditions on which the parole was granted has not been fulfilled cancel its order granting such parole. An intimation regarding such cancellation shall forthwith be given by the Superintendent of Prison to the officers specified in clause (b) of sub-rule (1). Upon such intimation, the police authorities may arrest the prisoner if at large, and demand him to undergo the unexpired portion of his sentence.

28. *Application of certain rules to parole cases.*—The provisions of rules 9(3), 10, 11 and 12 shall mutatis mutandis apply in the case of release of prisoners on parole.

MISCELLANEOUS.

29. *Form of order of release on furlough or parole.*—Every order of release on furlough or parole shall be made in Form E.

30. *Forms in general.*—The Forms appended to these rules, with such variations as the circumstances of each case requires, may be used for the respective purposes therein mentioned, and if used, shall be sufficient.

31. *Reference to "District Magistrate" to be construed as reference to Collector and Additional District Magistrate.*—References to "District Magistrate" in these rules shall be construed, in relation to the Hyderabad area of the State of Bombay, as references to the Collector and Additional District Magistrate.

32. *Repeal.*—The following rules and orders (including the Forms referred to therein), that is to say,—

(a) rules 1500, 1500-A, 1500-B, 1500-C, 1501, 1502, 1503, 1504, 1505, 1506, 1507, 1508, 1509, 1510, 1511, 1512, 1513 and 1514 contained in the Bombay Jail Manual, 1935;

(b) rules 737, 758, 759, 760, 761, 762, 763, 764 and 765 of the Hyderabad Prisons Rules, 1935;

Law

(10) all rules and orders made by the Governments of the present-organisation States of Saurashtra, Madhya Pradesh and Kutch in the matter of grant of furlough or parole and in force in the Saurashtra area, Vidarbha region and Kutch area of the State of Bombay, immediately before the commencement of these rules.

are hereby repealed :

Provided that such repeal shall not affect any furlough or parole granted under the rules or orders so repealed or the conditions on or subject to which such furlough or parole was granted, unless and until superseded or modified under the Act or these rules

FORM A.

SURETY BOND.

(See Rules 6, 10 and 24)

I, _____ inhabitant of _____
hereby declare myself surety for _____ prisoner
No. _____ and give the guarantee that he shall duly observe the
conditions of release on furlough/parole set out in Schedule 'A' and
shall appear himself before the Superintendent of _____ Prison
at _____ on the expiration of the period of his release
on furlough/parole and in case of his making default herein, I hereby bind
myself to pay to the Government of Bombay, the sum of Rs. _____

And I agree that the Government of Bombay may, without prejudice to any other rights or remedies of Government, recover from me the said sum as an arrear of land revenue.

And I agree that any extension of time given to prisoner will not discharge me from my liability to pay the said amount.

Dated this _____ day of _____ 195_____
signed by the abovenamed Surety in
the presence of :

1.

2.

Signature of the Surety.

Schedule.

(To be filled in).

FORM B.

PERSONAL BOND.

(See rules 7 and 24).

Whereas I (name) _____ inhabitant of (place) _____
have been sentenced to undergo imprisonment for the term of _____
years.

And whereas the Government of Bombay/the Inspector General of Prisons, State of Bombay/the Deputy Inspector General of Prisons, (head-quarters)/Commissioner, _____ Division/the Assistant Commissioner _____ has been pleased to release me on parole/furlough for the term of (_____) commencing from _____ and ending on _____ on condition of my executing a Personal Recognition Bond for my appearance on the following date viz. _____

* The conditions of release should be attached to this Bond as a Schedule.
(L.C.P.) L-2 FORM. H. 277-2

I hereby agree, with and bind myself unto the Government of Bombay to abide by the conditions mentioned in the Schedule attached and further agree to appear and surrender myself before the Superintendent of Prison at O'Clock on the following date viz., and in case the period of parole/furlough is extended then on the date following the date of expiry of such extended period of parole/furlough and in case of my making default herein I bind myself to pay to the Government of Bombay a sum of Rs. and I agree that the Government of Bombay may, without prejudice to any other rights or remedies, recover the said sum from me as an arrear of land revenue.

Dated this _____ day of _____ 195

Before me
Superintendent,
Prison

Signature of the Prisoner.

Schedule.
(To be filled in)

FORM C.
BOND GIVING A CASH SECURITY.
(See Rule 10).

Whereas I (name) _____ inhabitant of (place) _____ have been sentenced to undergo imprisonment for the term _____ years.
And whereas the Government of Bombay/Inspector-General of Prisons, State of Bombay/the Deputy-Inspector-General of Prisons, (headquarters)/Commissioner, _____ Division/the Assistant Commissioner, _____ has been pleased to release me on furlough/parole for the term of _____ commencing from _____ and ending on _____ on condition of my giving a cash security for my appearance on the following date viz. _____

I hereby agree with and bind myself unto the Government of Bombay to abide by the conditions mentioned in the appended Schedule and further agree to appear and surrender myself to the Jail Authorities at _____ O'Clock on the following date viz., _____ in case the period of furlough/parole is extended then on the date following the date of expiry of such extended period of furlough/parole and in case of my making default herein I bind myself to forfeit to the Government the sum of Rs. _____

Dated this _____ day of _____ 195

Before me.
Superintendent,
Prison.

Signature of the Prisoner.

Schedule.
(To be filled in)

FORM D.
FORM OF APPLICATION FOR RELEASE ON PAROLE.
(See Rule 22).

To: _____ Division,
The Commissioner.

Sir,
I (name of prisoner) _____, Prisoner No. _____ confined in _____ Prison hereby apply for