

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.626 OF 2020

Abdul Shakur S/o Mufesar Shekh
(His Uncle Atikul Habibul S/o Rehman Shaikh
at present confined in Open Jail Paithan as convict
no.5087)

Age : 31 year, Occ: Student,
R/o Room No.14, Atmaram Chawl,
Near Hanuman Temple, Bhandup West,
Mumbai.

... Petitioner.

Versus

The State of Maharashtra

... Respondent.

....

Mr. Rupesh A. Jaiswal, Advocate for the Petitioner.
Mr. M.M. Nerlikar, APP for State

....

**CORAM : RAVINDRA V. GHUGE &
SHRIKANT D. KULKARNI, JJ.**

DATED : 10th JULY, 2020

ORAL JUDGMENT :-

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. The petitioner before us is the nephew of convict No.5087 who is presently lodged in the open Jail at Paithan upon being convicted with life imprisonment for an offence proved under Section 302 of Indian Penal Code, by the Judgment delivered by the learned Additional Sessions Judge at Thane.

3. The cause for filing this petition is the impugned order dated 04.07.2020, by which the Superintendent of Prisons has declined to release the petitioner on emergency parole for the sole reason that he has availed of such parole only once here before. Reliance is placed upon a view taken by the learned Division Bench of this Court (Coram : T.V. Nalawade and Shrikant D. Kulkarni, JJ.) vide judgment dated 30.06.2020 in Criminal Writ Petition No.571/2020 filed by Kavita W/o Dilip Baviskar Vs. State of Maharashtra.

4. The learned Advocate for the petitioner makes out a ground that the outbreak of the COVID-19 pandemic has resulted in a serious threat to the inmates of various prisons and the State of Maharashtra has issued a circular dated 08.05.2020 by which the Maharashtra Prisons (Furlough and Parole) Rules 1959 were amended so as to facilitate the release of an inmate under certain circumstances. It is, therefore, prayed that the petition may be allowed and the convict namely; Atikul Habibul S/o Rehman Shaikh be released on emergency parole. A solemn statement is made in the petition that the petitioner has been granted furlough earlier on 17.02.2020 and after completion of the 45 days period, he has reported to the prison authorities in time.

5. The learned APP appearing on behalf of the State supports the impugned order dated 04.07.2020 and contends that the Superintendent of Prison has assigned a proper reason for rejecting the

application for parole filed by the convicts.

6. There is no dispute that the Government of Maharashtra issued the notification dated 08.05.2020, by which, it has permitted release on emergency parole in view of the outbreak of COVID-19 pandemic. This Court has held in *Kavita W/o Dilip Baviskar (supra)* that the condition that a person, who has availed of furlough on two occasions, can move an application for emergency parole, cannot dis-entitle an applicant from seeking emergency parole merely because he had availed of furlough once prior to moving such an application under Rule 19(1)(C) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules 1959 (Amended Provisions). The convict in the case preferred by *Kavita W/o Dilip Baviskar (supra)* had similarly availed of furlough on only one occasion prior to moving an application for emergency parole under the Amended Rules. This Court has considered the said circumstances and has allowed the petition vide order dated 30.06.2020.

7. We find that the circumstances before us are quite similar to the case filed by *Kavita W/o Dilip Baviskar (supra)*. We do not find any such circumstance being pointed out by the learned APP which would convince us to deviate from the view taken by this Bench in its order dated 30.06.2020 in the case of *Kavita Dilip Baviskar (supra)*.

8. In view of the above, this petition is allowed. The convict Atikul Habibul S/o Rehman Shaikh, Convict No.5087, confined in Open Prison at Paithan be released on emergency parole. It is made clear that as the number of Covid-19 patients in the State of Maharashtra are increasing alarmingly, the said convict shall refrain from leaving his home unless on emergency grounds and he shall keep himself confined to his residence in the interest of the society at large. Needless to state that, he is expected to report back to the Superintendent of Prisons at Paithan on or before the completion of the 45 days period of emergency parole, subject to the liberty available to him under the notification dated 08.05.2020.

9. Rule is made absolute in the above terms.

(SHRIKANT D. KULKARNI)
JUDGE

(RAVINDRA V. GHUGE)
JUDGE

SPR