

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

960. CRIMINAL APPLICATION NO. 1509 OF 2020
IN
CRIMINAL WRIT PETITION No. 626 of 2020

Abdul Shakur S/o Mufesar Shekh
(his uncle Atikul Habibul S/o Rehman Shaikh
convict of Open Jail, Paithan, as Convict No. 5087),
age 31 years occupation student R/o Room No. 14,
Atmaram Chawl, near Hanuman Temple,
Bhandup West, Mumbai.

...Applicant

VERSUS

The State of Maharashtra
Through : The Superintendent,
Open Prison, Paithan Dist. Aurangabad

...Respondent

AND
961. CRIMINAL APPLICATION NO. 1510 OF 2020
IN CRIMINAL WRIT PETITION No. 627 of 2020

Shehnaz W/o Rafique Shaikh
(her son Adil S/o Rafique Shaikh
convict of Open Jail, Paithan, as Convict No. 5200),
age 55 years occupation house wife
R/o 403, Sai Shraddha Apartment, B-wing,
Malvani Mahada, Malad (W), Mumbai.

...Applicant

VERSUS

The State of Maharashtra
Through : The Superintendent,
Open Prison, Paithan Dist. Aurangabad

...Respondent

Mr. Rupesh A. Jaiswal, Advocate for applicants in both applications
Mr. M.M. Nerlikar, Addl. Public Prosecutor for Respt./State

CORAM : T.V. NALAWADE &
M.G. SEWLIKAR, JJ.

DATE : 9th September, 2020

ORAL JUDGMENT : (Per : T.V. NALAWADE, J.)

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2. In both the proceedings, relief of extension of Covid-19 Parole is claimed. It appears that in both the proceedings, in view of the Order made by this Court, the prisoners were released on parole and the parole period of the applicant in Criminal Application No. 1509 of 2020 came to an end today itself and the parole period of the applicant in Criminal Application No. 1510 of 2020 came to an end on 6th September 2020. This Court had given extension to the parole period for some period to see that the matters do not become infructuous.

3. Copies of the Orders made at this Bench, though the other Court, are produced and they show that the Court directed that the prisoner is released for the period of 45 days but it is also further mentioned that it is subject to the liberty available to him

under the Notification dated 8th May 2020. The learned Addl. Public Prosecutor placed reliance on the observations made by the same Court in order in some other matters like ***Writ Petition No. 876/2020 (Hari Bhakt Thappa Vs. State of Maharashtra and another)*** and ***879/2020 (Shaukatali M. Husen Shaikh Vs. State of maharashtra and another)***. The learned Addl. Public prosecutor submitted that in the order the Court had asked the prisoners from similar circumstances to apply for emergency parole and such applications were to be considered by the Superintendent of Prison on merits.

4. This Court has interpreted the Notification of the State Government dated 8th May 2020. In view of the wordings of the Notification, in the case of ***Dinesh Arjunsing Thakur Vs. State of Maharashtra (Cri. Writ Petition No. 578 of 2020)***, this Court has held that when the first period of parole of 45 days is over, the period automatically gets extended unless and until the Notification is not withdrawn or amended by the State. Thus, when a prisoner comes out of jail on parole by using the Notification dated 8th May 2020, the benefit given gets automatically extended till the notification is still there. The said notification is still there.

5. In almost all matters decided by this Court, this Court

had observed that there will be automatic continuation, extension of parole in view of the object behind the notification. Only because other Court of this Bench made some specific order, benefit of that notification cannot be denied to those prisoners. This Court holds that the period needs to be extended and the extension will be as per the meaning of the Notification dated 8th May 2020. In almost all the matters, this Court has already expressed that if the Government wants to stop giving of the benefit, the Government is at liberty to withdraw the notification as such *condition is given in the notification and as it is not vested right given to the prisoners.* In the result, both the applications are allowed. The parole granted to them is deemed to be extended as per the Notification dated 8th May 2020. Rule is made absolute in those terms.

(M.G. SEWLIKAR)
JUDGE

(T.V. NALAWADE)
JUDGE

Madkar