

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

23 CRIMINAL WRIT PETITION NO.1439 OF 2020

AZIZ KHAN MOHD. KHAN PATHAN (C-7985)
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Yogesh Bolkar. (Appointed).
APP for Respondent/State: Mr. R. D. Sanap.
...

AND

29 CRIMINAL WRIT PETITION NO.1286 OF 2020

SHRIKANT @ RAMA S/O NARAYAN CHAVAN
VERSUS
STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Shailendra S. Gangakhedkar.
APP for Respondent/State: Mr. G. O. Wattamwar.
...

AND

33 CRIMINAL WRIT PETITION NO.1304 OF 2020

SHAIKH AHMED PASHA @ PAWAN RAJ MOHAN
VERSUS
STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mrs. Sharda P. Chate.
APP for Respondent/State: Mr. S. G. Sangle.
...

AND

37 CRIMINAL WRIT PETITION NO.1375 OF 2020

NITIN FAKIRA SALVE C-9212
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Advocate for Petitioner : Mr. Ravindra Nirmal.
APP for Respondent/State: Mr. R. D. Sanap.
...

CORAM : T. V. NALAWADE &
SHRIKANT D. KULKARNI, JJ.

DATE : 23rd November, 2020.

PER COURT:

. The first proceeding is filed to challenge the order made by the Respondent by which furlough leave is refused to the Petitioner. The reason given is that the prisoner is a convict for the offence punishable under Section 392 of the Indian Penal Code and he has not completed the term of imprisonment of ten years, which is the sentence given for the offence punishable under Section 392 of the Indian Penal Code. Other ground is given that the police authority has not recommended the grant of furlough leave. In the second proceeding, the application, which was filed for ordinary parole is rejected. The application was moved for parole on the ground that the wife of the prisoner is sick and she needs to undergo operation in respect of uterus. There is statement of the wife of prisoner dated 2nd May, 2019 in that regard and the learned counsel for Petitioner submitted that as yet the wife of the Petitioner has not undergone that operation. The parole is refused on the ground that the prisoner is convicted for the offence punishable under Section 397 of the Indian Penal Code also and the imprisonment of five years given for this offence is not yet completed by him. In the third matter, parole is

refused to prisoner on the round that he is sentenced to imprisonment for seven years for the offence punishable under Section 397 of the Indian Penal Code also and he has not undergone that period of sentence. Smt. Sharda Chate, learned counsel submitted that the parole was claimed on medical ground and necessary documents like certificates issued regarding serious illness of the mother of prisoner was produced. There is also conviction for the offence punishable under Section 364 of the Indian Penal Code and that is also mentioned as the reason in the order. In the last matter, the conviction is for the offence punishable under Section 376 of the Indian Penal Code and under the provisions of POCSO Act. There is life imprisonment for the offence of rape and there is also similar sentence for the offence punishable under the POCSO Act.

2 This Court has carefully gone through the provision Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959 as amended till today and also on the date of the order. The Rule shows that if there is conviction for the offence punishable under Section 392 to 402 of the Indian Penal Code, then the prisoner needs to undergo that sentence and only after that he becomes eligible to get furlough. If he is life convict for other offence in the same case, then after completion of the aforesaid term, he can get the furlough. Rule 19(2) shows that the Rules, which are applicable for furlough, are applicable

for regular parole also. The Rule also shows that if there is a conviction for the offence punishable under Section 376 of the Indian Penal Code and also if sexual offence is committed against the minor, the benefit of furlough cannot be given. In these matters, there is conviction and sentence for the offence punishable under Section 392 or 397 or 376 and POCSO Act. Recently, the Full Bench of this Court has made it clear that even the benefit of the Government notification dated 8th May, 2020, which allows emergency parole due to pandemic situation created by Covid-19 virus, such benefit cannot be given to the prisoner convicted for the offence punishable under the special Acts like POCSO Act. The finding is given in **Criminal Writ Petition (Stamp) No.3206 of 2020**, (*Pintu S/o. Uttam Sonale (C-10855) Vs. The State of Maharashtra*) on 6th November, 2020, at Principal Seat.

3 It is already observed that the conditions, which are applicable in respect of furlough, are applicable for regular parole. If parole is claimed on the ground of medical emergency of relative, then it is a regular parole and it is not emergency parole. Only the State has power to make such rules and that is an exercise of sovereign function. That function is not assigned to judiciary and so the Court cannot go beyond the Rules framed in this regard.

4 Mr. Bolkar, learned counsel placed reliance on the

decision given by other Bench at this Seat in **Criminal Writ Petition No.5 of 2019** (*Dumya @ Lakhan @ Inamdar Shrimant Byhosale Vs. The State of Maharashtra and others*) decided on 4th February, 2019. In that case, the prisoner had completed jail term of more than nine years when he was sentenced to imprisonment for ten years. That Bench granted the relief by observing that imprisonment of almost ten years was completed. In view of the aforesaid observations made with regard to the power of the Court and sovereign function, which is to be exercised by the State Legislature, this Court holds that the observations made by other Bench in Criminal Writ Petition No.5 of 2019 decided on 4th February, 2019 cannot be used in favour of the Petitioner of the first proceeding. In the result, the following order is passed:

ORDER

- I. All the petitions stand dismissed.
- II. The fees of the appointed counsel in the first proceeding is quantified as Rs.4,000/- and it is to be paid through the High Court Legal Services Sub-Committee, Aurangabad.

[SHRIKANT D. KULKARNI, J.]

[T. V. NALAWADE, J.]