

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2073 OF 2020
IN WP/1362/2020

THE STATE OF MAHARASHTRA
VERSUS
GUDDU @ KANSHA WAHAB SHAIKH

Mr.S.G.Sangle, APP for State.
Mr.Satej S.Jadhav, Advocate for the respondent.

**(CORAM : RAVINDRA V. GHUGE AND
B.U.DEBADWAR, JJ.)**

DATE : 07/12/2020

PER COURT :

1. This is an application filed by the State praying for recalling of our order dated 26/10/2020 delivered in Criminal Writ Petition No.1362/2020. By the said order, we had allowed the application of the respondent/convict for emergency parole under Rule 19(1) (C) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 and the State Notification dated 08/05/2020.

2. The contention of the learned Prosecutor is that the respondent/original petitioner Guddu alias Kansha Wahab Shaikh had moved this Court against the order of rejection of his application for emergency parole passed by the Superintendent of

Central Nasik Road Prison dated 28/09/2020. Though the said application was rejected by the Superintendent, as the applicant had not availed of parole or furlough leave at least on 2 occasions prior to his application under Rule 19(1)(C), the said convict had not completed 3 years in jail for being eligible for the emergency parole.

3. Another issue raised by the learned APP is that as the order of rejection was passed at Nasik by the competent authority, this Court would not have the jurisdiction of entertaining the writ petition, keeping in view 2 orders passed by a Co-Ordinate Bench viz, dated 08/08/2019 in Criminal Writ Petition No.1091/2019 filed by Baldev Baliram Lonari Vs. State of Maharashtra and others (Coram : T.V.Nalawade and K.K.Sonawane, JJ.) and order dated 22/01/2020 delivered in Criminal Writ Petition Nos.18/2020 and 19/2020, filed by Samadhan Pandit Choudhary and Umesh Ishwar Patil Vs. The State of Maharashtra and others (Coram : T.V.Nalawade and M.G.Sewlikar,JJ), wherein it has been concluded that if the order impugned is passed by the Superintendent of a particular prison in a particular district not amenable to the jurisdiction of the Aurangabad Bench of the Bombay High Court, such an aggrieved convict, would not be permitted to file a writ

petition before the Aurangabad Bench. He, therefore, submits that the convict could not have filed his Criminal Writ Petition before this Court at Aurangabad.

4. In so far as this application is concerned, though the learned Advocate for the applicant Mr.Jadhav has strenuously canvassed his grounds including the scope of jurisdiction of this Court in recalling of an order passed by this Court, in the light of Sections 362 and 482 of the Cr.P.C., he submits that he is instructed to state that the applicant Guddu alias Kansha would file a fresh application for emergency parole under Rule 19(1)(C) as soon as he completes 3 years in jail. He has completed about 2 years and 8 months in Jail as on date.

5. In the light of the above, this application is allowed and the impugned order sought to be recalled dated 26/10/2020 passed by us in Criminal Writ Petition No.1362/2020 shall stand recalled only to the extent of the grant of emergency parole to the applicant Guddu alias Kansha. Nevertheless the order allowing the criminal writ petition as against the order dated 28/09/2020 rejecting the application of the applicant Guddu, would be rendered infructuous as he intends to file a fresh application for parole or emergency

parole or furlough leave after completion of 3 years in jail including the period spent by him in jail while being an under trial.

6. Notwithstanding the above, Mr.Jadhav has strenuously canvassed that the issue of jurisdiction in cases of aggrieved convicts with reference to rejection of their application, either for furlough leave or parole/emergency parole leave, should know no territorial restrictions. His justification is that there are instances when accused are convicted at Jalgaon or Nandurbar or Nanded or Osmanabad etc. and the State Government, in order to regulate its occupancy levels of the jail inmates, transfers such accused to jails, for example, in Kolhapur or Yerwada or Nasik or Nagpur, which district may be amenable to the jurisdiction of this Court either at the Principal Seat or at the Nagpur Bench. To buttress his contention, he takes an example of an accused being convicted by the competent Court at Ratnagiri and is suffering his sentence at a jail in Nagpur. If his parole leave application at Nagpur is rejected by the Jail Superintendent, he should have the liberty of approaching either the Nagpur Bench or the Principal Seat at Bombay since he was convicted by the Court at Ratnagiri which is amenable to the jurisdiction of the Principal Seat.

7. We find that the submissions of Mr.Jadhav are logical. The learned Prosecutor concedes that it is the discretion of the Prison Authorities in the State of Maharashtra to relocate such convicts to any jails in Maharashtra with the object of regulating their occupancy levels.

8. We have gone through the earlier orders passed by the Co-ordinate Bench dated 08/08/2019 and 22/01/2020. With reference to Baldev Baliram Lonari Vs. State of Maharashtra and others (the order dated 08/08/2019), this Court had noted in it's order dated 22/01/2020 that relief was granted to some prisoners in similar circumstances emerging from the said cases.

9. With great respect to the view taken by this Court in it's order dated 22/01/2020, we are of the opinion that in peculiar facts and circumstances of such cases in the Covid-19 period, though there could not be a choice for a convict to choose a Forum, cases in which the convicts were convicted by the Courts amenable to the jurisdiction of a particular Bench, should be granted the liberty to approach the same Bench or to the Bench at which place the order of rejection of furlough/parole leave has been passed, for challenging the order. For illustration, if "A" is convicted by the

competent Court at Nandurbar and the said convict is undergoing his sentence at the Kolhapur Central Jail and if his application for emergency parole leave is rejected by the Jail Superintendent at Kolhapur, he should have the liberty of approaching this Court, either at the Principal Seat at Mumbai or the Aurangabad Bench of this Court. Surely, he would not have the liberty to approach the Nagpur Bench keeping in view that the offence was committed at Nandurbar, he was convicted at Nandurbar and he is undergoing his sentence at Kolhapur. Such prisoners should not be compelled to suffer rigours of litigation on the point of jurisdiction in the backdrop of an extra-ordinary situation of Covid-19.

10. As such, though we are partly allowing this application in the light of the foregoing paragraphs, we find that the issue as regards the jurisdiction of the Court in entertaining a criminal writ petition for challenging the order of rejection of the emergency parole leave application by the Jail Superintendent, can be more advantageously decided by a Larger Bench since we are not able to persuade ourselves to agree with the view taken earlier by this Court, vide order dated 22/01/2020 in the case of Samadhan (supra).

11. As such, we frame the following issue for reference to the

Larger Bench :-

'Whether;

a convict/prisoner can challenge the rejection of his parole application, only before the Forum of this Court having jurisdiction over the district in which the rejection order was passed and is precluded from approaching the bench having jurisdiction over the district in which the Trial Court convicting him/her is situated ?

12. We request the learned Registrar (Judicial) to place this matter before the Hon'ble the Chief Justice of the Bombay High Court for considering the issue for reference to a Larger Bench under Chapter (I) Rule 8 of the Bombay High Court Appellate Side Rules, 1960.

(B.U.DEBADWAR, J.)

(RAVINDRA V. GHUGE, J.)