

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

914. CRIMINAL WRIT PETITION NO. 1645 OF 2020

Sardar S/o Shahvali Khan (C-6608)
age 64 years occupation convict
R/o Room No. 10/11, Gowawala Chal,
LBS Road, Kurla, West Mumbai – 70
at present confined in Central Jail, Harsul, Aurangabad
...Petitioner

VERSUS

1. The State of Maharashtra
Through : The High Power Committee,
Administrative Building, Bandra, Mumbai
(As constituted as per decision of the
Hon'ble Supreme Court of India
in *Suo Motu Criminal Writ Petition No. 1/2020*)
2. The Superintendent,
Central Prison, Harshul, Aurangabad
...Respondents

Mr. Rupesh A. Jaiswal, Advocate for petitioner
Mr. S.D. Ghayal, Addl. Public Prosecutor for Respts./State

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

DATE : 16th December, 2020

ORDER :

1. The present proceeding is filed for a direction to the respondent No.1, State Government through the High Power Committee created under the directions of the Supreme Court in *Suo Motu Cri. Writ Petition No. 1/2020* to take decision on the representation of the petitioner dated 16th October 2020. Heard the

learned Counsel for the petitioner.

2. Copy of the representation is produced and in the representation the petitioner has requested to consider various aspects while giving opinion and they are as under:

- (I) Age of convict/under trial
- (II) Previous conduct in jail and also after release on parole and furlough.

3. His emergency parole application is already rejected by the authority and that order is confirmed by this Court. He has requested to modify the guidelines prepared by the High Power Committee so that he gets benefit of the guidelines and he comes out on emergency parole.

4. The aforesaid High Power Committee came to be created in view of the directions given by the Apex Court. However, the State Government issued the Notification dated 8th May 2020 in which some conditions are laid down for giving benefit of this Notification. The High Power Committee has been preparing guidelines for use of the sovereign power of the State in regard to granting emergency parole in the situation created by pandemic of Corona virus. Though such guidelines are there, there are also Rules prepared by the State Government, like Furlough and Parole

Rules, 1959. This Court has already laid down that in addition to the conditions mentioned in the aforesaid Government Notification, the Rules made under Rules of 1959 for grant of furlough need to be considered as the conditions which are mentioned in the notification indicate that there are additional conditions and the Rules already made are also applicable. This Court has already made interpretation to that effect. In view of this circumstance and as it is sovereign power of the State which needs to be used under statute created by the State Legislature, this Court holds that it is not possible for this Court to give direction to the High Power Committee to issue guidelines. It is up to the State to consider the Rules which can be used for release of prisoners on parole, emergency parole or furlough. The purpose of creation of the High Power Committee is limited and that is for peculiar situation created by pandemic. In view of these circumstances, this Court holds that the petitioner is trying to get emergency parole somehow and with that intention he has filed the present proceeding. The present proceeding stands dismissed.

Sd/-
(M.G. SEWLIKAR)
JUDGE

Sd/-
(T.V. NALAWADE)
JUDGE