

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION (WP) NO. 377/2020

1. Sunil S/o Maruti Chimurkar,
C-10575 detained in
Central Prison, Nagpur
(Presently in Jail) PETITIONER

// VERSUS //

1. State of Maharashtra through
Chief Secretary of Home Department
Mantralay, Mumbai & ONE
2. Superintendent of Central Prison,
Nagpur. RESPONDENT(S)

Ms. R.M. Mishra, Advocate for the petitioner (Appointed)
Ms. Ketki Joshi, APP for the State

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 20/10/2020

ORAL JUDGMENT : (PER:- SUNIL B. SHUKRE, J.)

- 1] Heard. **Rule.** Rule made returnable forthwith.
- 2] Heard finally by consent.
- 3] According to the learned appointed Counsel for the petitioner, the petitioner is eligible for being released on emergency parole as his conviction is not under the prohibited categories of

offences, the offences punishable under any of the clauses (a to e) of Section 376 of the Indian Penal Code, and the petitioner has been convicted under the permissible category of the offence punishable under Section 376(f) of the Indian Penal Code.

4] According to Ms. Joshi, learned APP for the State, the petitioner having been recently convicted and placed behind the bar on 12.12.2019, was not earlier released on either on furlough or parole. Therefore, this case is not covered by the Notification dated 08.05.2020, which requires the Authority to examine the past conduct of the prisoner as reflected from his returns to prison on time atleast on two earlier occasions.

5] The Rule 19(1) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 (hereinafter referred to as the “Rule of 1959”) has been amended by the Notification dated 08.05.2020. The amendment introduces additional Clause, which is Clause (C), for grant of benefit of parole upon declaration of epidemic under the Epidemic Diseases Act, 1897 by the State Government. Under this Notification, two categories of prisoners have been broadly created. One category of convicted persons is of those whose maximum punishment is 7 years or less and other category of convicted persons is of those whose maximum sentence is above 7 years. There are also sub-categories in these two categories, which impose further restrictions on the authorities to grant

parole under Clause (C) of Rule 19 (1) of the Rule of 1959. One of the restrictions is that, the convicted person should have returned to prison on time on last two releases (whether on parole or furlogue). The categorization made in this Notification and the restrictions placed therein, have been upheld by the Division Bench of this Court. It has been held that “*what is conferred as a benefit by this Notification is special privilege upon the convicted prisoners*”, which is confirmed by the Hon’ble Supreme Court in the case of **National Alliance for People’s Movements & Ors. Vs. State of Maharashtra and Ors. in Special Leave Petition (CRL) No. 4116 of 2020**. It has been held that what has been conferred as benefit by Notification dated 08.05.2020 is a special privilege and, therefore, unless and until, all its conditions are complied with, no prisoner can claim his release on emergency parole under the provisions made in Rule 19(1)(C) the Rule of 1959.

6] In the instant case, this is the first time that the petitioner has sought his release from the prison. He was never released earlier either on parole or furlogue. Therefore, there is no occasion for the Authorities in the present case to examine the previous conduct of the petitioner in relation to his sincerity shown by the petitioner is return to prison on time on last two releases. Thus, the petitioner does not fulfill the criteria of Clause (C)(ii) of Rule 19(1) of the Rule of 1959 and in fact, this is the ground on which the application of the petitioner for

grant of emergency parole has been rejected. We do not see any illegality in the impugned order.

7] The petition deserves to be dismissed and it is **dismissed** accordingly.

8] Legal remuneration of Rs.2500/- be paid to the learned appointed Counsel.

9] This order be uploaded on the official website and also be communicated to the learned counsel appearing for the parties, either on the email address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

JUDGE