

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL LD-VC WRIT PETITION No.112/2020

Vijendra Malaram Ranwa,
C-5068, Aged about 27 years,
Ocu. Nil (Presently in Central Prison, Amravati)

PETITIONER

.....VERSUS.....

1. State of Maharashtra,
Through S.P Central Jail,
Amravati.
2. Divisional Commissioner,
Amravati Division,
Amravati.

RESPONDENTS

Shri Raju Kadu, Advocate for petitioner.
Shri G.R. Tiwari, Additional Public Prosecutor for respondents.

CORAM : A.S. CHANDURKAR AND AMIT B. BORKAR, JJ.
DATE : 14TH JULY, 2020

ORAL JUDGMENT (PER : AMIT B. BORKAR, J.)

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and video quality was proper.

2. Rule. Rule is made returnable forthwith. Heard finally with the consent of the parties.

3. Heard Shri Kadu, learned counsel for the petitioner and Ms.G.R.Tiwari, learned Additional Public Prosecutor for respondents.

4. The petitioner takes exception to the order dated 16.1.2020 passed by the Divisional Commissioner, Amravati, thereby rejecting the application of the petitioner for grant of parole. The Divisional Commissioner has rejected the application merely on the ground that there is no evidence placed by the petitioner in support of the reasons stated in the application filed by the petitioner. It has also been stated in the impugned order that there is no evidence about sister of the petitioner suffering from serious illness.

5. Shri Kadu, learned counsel appearing for the petitioner, submitted that in view of the subsequent Notification dated 8th May, 2020, the reasons stated in the impugned order no longer survive, as the bar under sub Rule (i) of Rule 19 of the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959 has been restricted to the offences mentioned in proviso (ii) of sub Rule (i) of Rule 19 and the conviction under POCSO Act is no longer disqualification for

grant of parole. Shri Kadu, learned counsel further relied upon the certificate issued by Police Commissioner, Jodhpur dated 22.5.2020 whereby the Commissioner of Police, Jodhpur, who has recommended release of the petitioner by stating that the condition of the sister of the petitioner has been deteriorated and it is in the interest of the sister of the petitioner that the petitioner be released. Shri Kadu further submitted that other detenues are released by respondent no.2, who were convicted of the same offence for which the petitioner was convicted and therefore, it was expected from respondent no.2 that similar treatment should have been given to the petitioner. Ms. Tiwari, learned Additional Public Prosecutor for respondent nos.1 and 2 submitted that there is no material placed by the petitioner in support of reason stated in the application for release on parole. It is also submitted that respondent no.2 has considered the matter from all perspective and has given self-explanatory order and, therefore, no interference is required at the hands of this Court.

6. We have heard both learned counsel and carefully considered the documents and Notification produced on record.

7. On perusal of Notification dated 8th May 2020 and in particular proviso (ii) of sub Rule (1) of Rule 19, it appears that the proviso is applicable only to the statutes mentioned in the said proviso . The said proviso and sub Rule (2) of Rule (1) of Rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2020 as under:

“(C) On declaration of epidemic under the Epidemic Diseases Act, 1897, by State Government:

(i) For convicted Prisoners whose maximum punishment is 7 years or less, on their application shall be favorable considered for release on emergency parole by the Superintendent of Prison for a period of 45 days or till such time that the State Government withdraws the Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 dyas shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days.

(ii) For convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by Superintendent of Prison, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough) for the period of 45 days or till such time that the State Government withdraws the Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in ever 30 days.

Provided that the aforesaid directions shall not apply to convicted prisoners convicted for serious economic offences or bank scams or offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA etc (which provide for additional restrictions on grant of bail in addition to those under the Code of Criminal Procedure, 1973 (2 of 1974) and also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra”.

8. It is undisputed fact that the petitioner has been convicted for offences under Sections 6, 10, 12 of POSCO Act and Section 77 (i) and 77(2) of Indian Navy Act, 1957.

9. Considering the language of proviso of Notification dated 8th May 2020 and particularly in view of the fact that the offence under POCSO Act is not mentioned in the proviso which bars for grant of parole, there should not be any impediment for releasing the petitioner on parole.

10. Apart from the position of the law, it is undisputed that the other convicts are released on parole by the order dated 7.1.2019, 29.11.2019 and 3.12.2019. In case of all other convicts, those were convicted under the provisions of POCSO Act and all the convicts were released on parole for a period of 30 days.

11. It is pertinent to note that the Commissioner of Police, Jodhapur, has specifically stated in his letter dated 22.5.2020 the condition of sister of the petitioner is physically and mentally very weak and by release of the petitioner, the condition of the sister can be improved.

12. Taking overall view of the matter, we are of the opinion that respondent no.2 was not justified in rejecting the application for parole of the petitioner on the ground that the petitioner has failed to prove the illness of the sister of the petitioner and, therefore, the order impugned in the petition dated 16.1.2020 deserves to be quashed and set aside.

13. We, therefore, pass the following order:

(i) The impugned order dated 16.1.2020 passed by the Divisional Commissioner, Amravati, is quashed and set aside.

(ii) Respondent no.2 is directed to release the petitioner on parole of 30 days, on usual terms and conditions after complying with all usual formalities.

14. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

15. The order be communicated to the 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

Ambulkar