

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

CRIMINAL WRIT PETITION NO. 550/2020

PETITIONER : Amit @ Papa Prakash Takbhavare,
Convict No. C/89, aged 55 years, Occ. Nil,
Confined at Open Prison, Gadchiroli.

...VERSUS...

RESPONDENTS: 1. State of Maharashtra, through
Secretary, Home Department, Mantralaya,
Mumbai.

2. The Superintendent,
Open Prison, Gadchiroli

Ms. S.D.Wankhede, Advocate for petitioner
Shri A.A.Madiwale, APP for respondent nos.1 and 2

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.
DATE : 07/12/2020.

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

.1] Rule. Rule made returnable forthwith. Heard finally
with the consent of the learned Counsel for the parties.

2] The rejection of the application of the petitioner seeking
emergency parole in terms of G.R dated 08.05.2020, thereby
amending the provision made in Rule 19 of the Maharashtra Prisons
(Mumbai Furlough and Parole) Rules, 1959 (hereinafter call Rules

1959, for short) on the ground of prevailing pandemic situation in the country, is the subject matter of this petition.

3] In order to consider a prisoner to be eligible for release on emergency parole, it is necessary that he fulfills certain conditions mentioned in the amended provision of Rule 19 of Rules, 1959. The relevant condition in the present case is of the prisoner having surrendered before the jail authority on last two occasions on due dates.

4] In the present case, the petitioner had surrendered himself out of two occasions, on one occasion with a delay of two days. The learned counsel for the petitioner relying upon the view taken by this Court in LD-VC/Criminal Writ Petition No. 768/2020, decided on 04.08.2020, submits that this delay being minor should be condoned and the petitioner be considered as eligible for his release on emergency parole in terms of G.R. dated 08.05.2020. She also placed reliance upon the similar view taken at the Principal Seat at Mumbai in the case of *Sobha Sitaram Tayade vrs. State of*

Maharashtra in Criminal WP-ASDB-LD-VC No. 87 of 2020, decided on 28.07.2020.

5] According to the learned APP these judgments could have no application in the present facts and scenario, as there has been a sea change in the severity of the pandemic situation.

6] The judgments relied upon by the learned counsel for the petitioner, it must be noted, were delivered at the time when the pandemic situation was at the highest peak in the country. At that time, the need of the situation was de-congestion wherever possible and therefore, the State Government had taken various measures at various places to ensure that there was no crowd at public places, public roads, offices, prisons and so on. During that period of time, the G.R. dated 08.05.2020 was issued and it enabled the prison authority to initiate measures for de-congestion of the prisons on fulfillment of certain conditions by the prisoners. The G.R. dated 08.05.2020 thus amended the provision contained in Rule 19 of the Rules, 1959 and enabled the prisoners to secure their release on emergency parole in terms of the prescription given in G.R. dated

08.05.2020. The main purpose of the G.R. was to de-congest the jail and empower the jail authority to manage the affairs of the jail in an effective way so that the spread of disease was controlled.

7] Now, there has been a considerable change in the whole scenario in the country. The severity of the pandemic situation has decreased and the need for de-congestion of prisons has been reduced proportionately. When the situation has changed, the law being dynamic, has also to adapt itself to the change in the circumstances of the society, specifically in the light of the fact that the G.R. dated 08.05.2020 was brought to fulfill a particular purpose, which appears to have been served. Situation at its publication and the situation extant as of date, are different and now, there is much ease in the situation. If this Court had condoned the delay of two days or a few more days in the past, it was in the context of the intensity of the pandemic situation which was prevailing in the month of July and August, 2020. That intensity is no longer witnessed and is prevalent at present and this is the reason why the State Government and the High Court have allowed the opening of the offices, physical hearing by this Court at Principal

Seat and also at Nagpur Bench and Aurangabad Bench and even the public transport to a considerable extent. The restaurants and shops have also been reopened, of course, subject to restrictions. This would only show that the pandemic situation is slowly being brought under control and that would mean that the interpretation of law would also have to be made by this Court in a way which would be consistent with the present situation prevailing in the State.

8] In this view of the matter, we do not think that what was interpreted in Criminal W.P. No. 768/2020 and Cri. W.P. No. 87 of 2020 in the context that was prevailing at that period of time would also serve as the interpretation which would suit and go along with the context of present today. It also needs to be noted that in a number of cases, where prisoners were released on emergency parole under the G.R. dated 08.05.2020, the prisoners had failed to surrender within time, thereby requiring the Police machinery to be put in motion, to secure their return to the prisons. Thus, when the situation has changed and no longer remains the same as it was, when the G.R. dated 08.05.2020 was enacted, the

approach for its interpretation, also ought to change, looking to the purpose for which the G.R. was brought into effect and the Rules amended.

9] Besides that, the petitioner was already released from prison if not on emergency parole but on furlough leave on 22.05.2020, which was during the peak period of covid pandemic. It was after the G.R. dated 08.05.2020 came into force. The release of the petitioner on such furlough leave serve the purpose of G.R. dated 08.05.2020, which was for the purpose of de-congestion of the jail. Having already served the purpose of G.R dated 08.05.2020 in an indirect manner after release of the petitioner on furlough leave on 22.05.2020, in our considered view, there is no warrant for the jail authority to once again serve the same purpose by releasing the petitioner on the ground of emergency parole.

9] In the result, we find no merit in the petition. The petition is, therefore, dismissed. Rule is discharged.

JUDGE

JUDGE