

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

954. CRIMINAL WRIT PETITION NO.73 OF 2021

Shankar S/o Vitthal Khare
age 30 years occupation convict
R/o Yellambghat, Renapur Dist. Latur
At present confined in Central Prison, Aurangabad

...Petitioner

VERSUS

The State of Maharashtra
Through : The Superintendent,
Central Jail, Aurangabad.

...Respondent

Mr. R.A. Jaiswal, Advocate for petitioner

Mr. S.J. Salgare, Addl. Public Prosecutor for Respt./State

CORAM : T.V. NALAWADE &

M.G. SEWLIKAR, JJ.

DATE : 5th February, 2021

J U D G M E N T (PER : T.V. NALAWADE, J.)

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2. Present proceeding is filed for the relief of quashing and setting aside the order made by the respondent dated 20/12/2020 and for a further direction to release the petitioner on emergency parole under the State Government Notification dated 08/05/2020.

The submissions made and the record show that the petitioner was convicted in two separate cases, like Special Case (POCSO) No. 16/2019 and he was sentenced to suffer imprisonment of six months for offence punishable under the Prevention of Children from Sexual Offences Act and he was directed to pay fine of Rs. 1000/-, in-default of payment of fine he was to further suffer R.I. for one month. The submissions made show that the petitioner has undergone entire sentence which was given in this case and it cannot be said that he is behind the bars for conviction in POCSO. Case.

3. The submissions made and the record show that the petitioner was also convicted and sentenced for the offence punishable U/Ss. 302 and 392 of the Indian Penal Code in other case. For offence of murder, he is sentenced to suffer life imprisonment and for offence punishable U/S. 392 of I.P.C., he is sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 5000/-.

4. The reasons for rejection of emergency parole are as follows:

- (I) The petitioner is convicted for offence punishable U/S. 395 of I.P.C

(II) The petitioner is convicted for offence punishable under the Special Enactment, like POCSO., and so he is not entitled to emergency parole under the aforesaid State Government Notification.

(III) That the petitioner had not availed parole or furlough in the past even on single occasion.

5. At the outset, it needs to mention that the petitioner is not convicted for offence punishable U/S. 395 of I.P.C. though he is convicted for offence punishable U/S. 392 of I.P.C. Rule 4(2) of the Prisons (Bombay Furlough & Parole) Rules, 1959, as amended recently runs as under:

"4. When prisoners shall not be granted furlough:-

All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough:

(1)

(2) Prisoners convicted of offences under sections 392 to 402 (both inclusive) of the Indian Penal Code (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective Section). "

6. This Rule shows that if there is conviction for offence punishable U/S. 392 of I.P.C. he becomes eligible for furlough after completion of stipulated sentence in respect of this section. Admittedly he has completed the jail term of the sentence given for

offence punishable U/S. 392 of I.P.C. if the period behind the bars is considered. Today a statement was made that he has paid fine amount also in respect of the sentence of fine imposed for offence punishable U/S. 392 of I.P.C. The learned Addl. Public Prosecutor has collected the written instructions from the Superintendent of Aurangabad Jail to that effect. Thus, there is no bar of the prohibition of Rule 4 in the present case to grant emergency parole to the petitioner. As already observed, he is not behind the bars for conviction given under the Special Enactment, like, POCSO. It can be said that at present he is behind the bars for offence of murder and he is suffering life imprisonment. He has completed more than three years' jail term and, that way, he is eligible for consideration for granting emergency parole under the aforesaid Government Notification. He cannot be denied benefit on the ground that in the past he had not availed furlough or parole. That interpretation of the Notification is already made by this Court. Due to all these circumstances, this Court holds that the order made by the respondent needs to be set aside and benefit of the aforesaid State Government Notification needs to be given to the petitioner. In the result, the following order.

O R D E R

- (I) The petition is allowed. The order of rejection of emergency parole made against the petitioner is hereby quashed and set aside.
- (II) The application which was filed for the relief of emergency parole is hereby allowed. He is to be released on emergency parole on usual terms and conditions, within seven days from today.
- (III) Rule made absolute in aforesaid terms.

(M.G. SEWLIKAR)
JUDGE

(T.V. NALAWADE)
JUDGE

Madkar