

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

982 CRIMINAL WRIT PETITION NO.146 OF 2021

KASAM S/O. ALISHA SHAIKH (C-320)
VERSUS
THE STATE OF MAHARASHTRA

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Mr. Rupesh Jaiswal, Advocate for the petitioner.
Mr. G.O. Wattamwar, A.P.P. for the respondent - State.

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CORAM : **SUNIL P. DESHMUKH AND
ABHAY AHUJA, JJ.**

DATE : 18th February 2021.

ORAL ORDER :-

1. Present criminal writ petition has been moved by a convict suffering life imprisonment and fine of Rs. 2500/- for offence punishable under section 302 of the Indian Penal Code. Petitioner has been arrested on 10-08-2003 and has been convicted on 29-08-2005 and has been behind bars for more than 3 years.
2. His application for emergency parole has been turned down under impugned order dated 23-10-2020 for the reason that convict petitioner has previously neither gone on furlough or parole and has not even once gone on leave.
3. By our order dated 18th February, 2021, in Criminal Writ Petition No. 92 of 2021, we have, after examining the law in

respect of emergency parole during Covid-19 pandemic and more particularly the newly added Rule 19(1)(C)(ii) to the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, which is further to the decision of the Supreme Court and the Notification referred to in the petition, passed a detailed order. Paragraphs 10, 11 and 12 of the said order are relevant and are quoted as under :

“10. The rule appears to have its genesis in COVID-19 pandemic is to see that the prisoners as well as jail authorities and employees should not be infected/affected under epidemic and to avoid and / or control spread of the disease and, inter alia, to de-congest prisons and facilitate control and / or treatment of the diseases. Reference to two releases and return shall not undo basic purpose underlying the provision in otherwise eligible cases. Purpose underlying the condition of release and return on time twice is to have assurance of conduct of convict to surrender on time on expiry of furlough / parole period would be to reduce probability of contrary conduct. To follow the provision rigidly in the otherwise eligible cases, would not be compatible with the intention underlying incorporation of amended provision.

11. Having regard to that in quite a few cases of convicts, insistence to have compliance of condition of release and return on time twice referred to

under rule 19 (1) (C) (ii) appears to be onerous when convict has not at all availed of or has availed of furlough / parole only once earlier, despite otherwise being eligible his case would not be entertained. Therefore, not being released earlier on two occasions or for that matter only once, having regard to purpose and intendment underlying incorporation of provision clause (C) (ii) into Rule 19 (1) for emergency parole, we deem it appropriate that such prisoners may not be detained from availing of emergency parole only for the reason that he had not availed furlough / parole twice or only once, if they are otherwise eligible. In such cases, benefit to have release on parole, pursuant to rule 19 (1) (C) (ii) shall not be held back. There is no other reason coming forth other than reference to requirement under the rule to decline the benefit to prisoner.

12. We, therefore, deem it appropriate to follow the course charted by decisions of division benches (supra) and find that in the present matter claim for release on emergency parole would not be held back for non fulfillment of requirement to have release and return on time twice”.

4. The aforesaid decision being squarely applicable to the facts of this case, the following operative order is passed :

ORDER

As such, writ petition succeeds. Impugned order passed by Superintendent of Jail is set aside. Jail authority may release the petitioner on emergency parole, without insisting on fulfillment of condition of release and return on time twice, if he is otherwise eligible.

(ABHAY AHUJA, J.)**(SUNIL P. DESHMUKH, J.)***VD_Dhirde*