

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

981 CRIMINAL WRIT PETITION NO.145 OF 2021

APPARAO PUNDLIK BHURKE (C-8859)
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Mr. Ravindra Nirmal, Advocate for the petitioner.
Mr. A.V. Deshmukh, 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 10 years imprisonment and Rs.3,000/- fine for offence punishable under section 304 (i) of the Indian Penal Code. Petitioner is behind bars since 2015 and has been convicted in 2018.

2. His application for emergency parole, pursuant to Rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, has been turned down under impugned order dated 03-10-2020 for the reason, petitioner being not fulfilling criterion under amended rule 19 (1) (C) (ii) that convict should

have returned on time twice on last two releases, as the petitioner has not gone on leave even once during the term of punishment.

3. By our order dated 18th February, 2021, in Criminal Writ Petition No. 92 of 2021, we have, after examining the newly added Rule 19(1)(C)(ii) to the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, passed a detailed order. Paragraphs 10, 11 and 12 of the said order are pertinent 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.)

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