

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

905 CRIMINAL WRIT PETITION NO.228 OF 2021

Govind s/o Ramrao Jadhav C-8726

Age major, Occ. Nil,

R/o. At presnet Harsul Prison

Tq. and District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through its Home Department
Mantralaya, Mumbai

2. The Superintendent
of the Central Jail Harsool
District Aurangabad

...Respondents

.....

Advocate for Petitioner : Mr. Chate Sharada P.

APP for Respondents: Mr. A.S. Shinde

.....

AND

959 CRIMINAL WRIT PETITION NO.333 OF 2021

Rohit s/o Balaji Waghmare C-9230

Age major, Occ. Nil,

R/o. Aurangabad Central prison,

Tq. and District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through Secretary, Home Department
Mantralaya, Mumbai

2. The Superintendent
of the Central Jail Harsool
District Aurangabad

...Respondents

.....

Advocate for Petitioner : Mr. Ravindra Nirmal

APP for Respondents: Mr. A.V. Deshmukh

CORAM : V. K. JADHAV AND
M. G. SEWLIKAR, JJ.
DATED : 9th MARCH, 2021

ORAL JUDGMENT (PER V.K. JADHAV. J.):

1. Rule. Rule returnable forthwith. By consent, heard finally at admission stage.
2. In both these writ petitions, common and identical question is involved and therefore, these petitions are taken together for hearing and disposed of by this common judgment and order.
3. In terms of the notification dated 8.5.2020 issued by the State Government on the backdrop of outbreak of COVID-19 pandemic situation, the petitioners herein have filed leave applications for emergency parole to the respondent authorities, however, the respondent authorities rejected the leave applications by impugned order solely on the ground that in terms of the said notification the petitioners ought to have availed either furlough or parole leave in the past and that the petitioners ought to have returned to jail in time on such last two occasions.
4. Learned counsel for the petitioners submit that this issue is no longer *res-integra* in view of the judicial pronouncement of this court **(Coram: T. V. Nalawade and Shrikant D. Kulkarni, JJ.) in criminal writ petition No. 571 of 2020** decided on **30.6.2020, (Kavita w/o**

Dilip Baviskar vs. State of Maharashtra), and thereafter in various cases, this court has interpreted the conditions laid down in the aforesaid Government notification and held that the said condition is to ensure that the prisoner should return the jail on his own in time after emergency parole period is over.

5. Learned A.P.Ps. appearing in the respective matters have supported the order passed by the respondent authority by referring the conditions as laid down in the notification dated 8.5.2020.

6. We have carefully gone through the judgment and order passed by this Court in the case of ***Kavita w/o Dilip Baviskar vs. State of Maharashtra (supra)***. This court in para 4 and 5 of the said judgment has made the following observations:-

“4. In the notification dated 8th May 2020, the State Government has given direction to the Jail Authority to see that the prisoners, who are behind the bars, are released on emergency parole in view of the situation created by pandemic of Covid-19 virus. In the said notification, there is condition that the prisoner, who is otherwise eligible to get furlough or parole leave, can get the benefit of this notification, provided that in the past he was released from jail on furlough or parole leave on two occasions and on all the occasions, he had surrendered in time.

5. Due to the aforesaid condition, peculiar and strange circumstance is created as against prisoner, like present petitioner, even if he has been actually behind the bar for

more than 11 years. The petitioner was granted furlough leave only once and on that occasion he turned up in time. He did not avail furlough leave on other occasion and not claiming the furlough leave on other occasion cannot make him dis-entitled to claim the benefit of the aforesaid notification. The purpose behind putting such condition can be only to ensure that the prisoner will surrender in time after expiry of emergency parole period. There cannot be any other intention behind such a condition."

7. We agree with the view expressed on earlier occasion by the Division Bench that said condition is prescribed to ensure the timely return of the prisoner, who has been granted emergency parole leave on account of outbreak of Covid-19. It would be ridiculous to read the said condition as condition barring the prisoner to apply for emergency parole leave for the reason that on earlier occasion they were not released on parole or furlough leave. Apart from this, we agree with the submissions made by learned counsel for the petitioners that the respondent authorities cannot make discrimination as against the petitioners for the reason that the petitioners can very well stay in jail safely by maintaining social distance, as at present less number of inmates are there in the jail since others have been granted emergency parole leave by giving benefit of the aforesaid notification.

8. In view of above, we are inclined to allow these writ petitions. Hence, we proceed to pass the following order:-

O R D E R

- I. Both the writ petitions are hereby allowed.
- II. Impugned orders rejecting emergency parole are hereby quashed and set aside.
- III. Applications filed by the petitioners for emergency parole under Government Notification dated 8th May, 2020, are hereby allowed.
- IV. The petitioners be released on emergency parole on usual terms and conditions within seven days from today.
- V. Rule made absolute in the above terms.
- VI. Authenticated copy of the order is allowed to both the sides.

(M. G. SEWLIKAR, J.)

(V. K. JADHAV, J.)

rlj/