

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

80. CRIMINAL WRIT PETITION NO.208 OF 2021

Manohar S/o Kondiba Waghmare, C-9264
age major occupation nil
R/o at present Harsul Prison
Taluka and Dist. Aurangabad

...Petitioner

VERSUS

1. The State of Maharashtra
Through its Home Department
Mantralaya, Mumbai.
 2. The Superintendent,
Central Jail, Harsul Dist. Aurangabad
- ...Respondents

AND

81. CRIMINAL WRIT PETITION NO.229 OF 2021

Vinayak S/o Maroti Dhawale, C-8879
age major occupation nil
R/o at present Harsul Prison
Taluka and Dist. Aurangabad

...Petitioner

VERSUS

1. The State of Maharashtra
Through its Home Department
Mantralaya, Mumbai.
 2. The Superintendent,
Central Jail, Harsul Dist. Aurangabad
- ...Respondents

Mrs. S.P. Chate, Advocate for petitioner in both writ petitions

*Mr. G.O. Wattamwar, Addl. Public Prosecutor for Respts./State in
Cri.W.P. No. 208/2021*

*Mr. S.J. Salgare, Addl. Public Prosecutor for Respts./State in Cri. W.P.
No. 229/2021*

CORAM : T.V. NALAWADE &

M.G. SEWLIKAR, JJ.

DATE : 22nd 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. Both the proceedings are filed for challenging the order made by the respondents by which emergency parole which is permissible under the State Government Notification dated 08/05/2020, is refused. Though in the first proceeding in the Prayer Clause date of impugned order is mentioned as 17/12/2020 when it is 21/12/2020, that mistake can be ignored in view of the urgency of the matter and the nature of relief sought, this Court is presuming that the proceeding is filed for quashing and setting aside the order dated 21/12/2020.

3. The submissions made by both the sides and the information supplied through the Superintendent of Aurangabad Central Jail show that on the relevant date, both the petitioners had completed three years and four months of jail sentence and they were eligible for consideration. The emergency parole is refused on the ground that they had not availed either parole or furlough even on single occasion. There is a condition in the aforesaid notification dated 08/05/2020 that the prisoner ought to have availed furlough or parole in the past and on last two occasions he ought to have returned to jail on his own in time. This Court has interpreted that

condition and this Court has held that the condition is there to ensure that the prisoner will return to jail on his own when the parole period is over. This Court has held that if the prisoner had not availed furlough or parole in the past but he was eligible for getting furlough or parole in the past, then this circumstance cannot come in his way to get the benefit of the scheme mentioned in the aforesaid Government Notification. In view of these circumstances, this Court holds that the orders made by the respondents cannot sustain in law. So, the following order.

O R D E R

- (I) Both the petitions are allowed. The orders of rejection of emergency parole made against the petitioners are hereby quashed and set aside.
- (II) The emergency parole applications of both these petitioners stand allowed. They are 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