

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

902 CRIMINAL WRIT PETITION NO.284 OF 2021

Ashokkumar Dashrat Salam C-5109,
Age : 32 years, Occu. Nil, R/o At present
Paithan Open Prison, District Aurangabad. ...Petitioner.

Versus

1. The State of Maharashtra,
Through its Home Department
Mantralaya, Mumbai.
2. The Superintendent,
of the Open Prison at Paithan,
District Aurangabad. ...Respondents

.....
Advocate for Petitioner : Ms. Sharada P. Chate
APP for Respondents: Mr. M. M. Nerlikar
.....

AND

906 CRIMINAL WRIT PETITION NO.240 OF 2021

Ashok S/o Umaji Kadam, Convict No.5297,
Age : 38 years, Occu. Convict, R/o At present
confined in Open Prison, Paithan. ...Petitioner.

Versus

The State of Maharashtra,
Through Superintendent,
Open Jail Paithan. ...Respondent

.....
Advocate for Petitioner : Mr. Jaiswal Rupesh A
APP for Respondent: Mr. S.J. Salgare
.....

AND

907 CRIMINAL WRIT PETITION NO.241 OF 2021

Baban S/o Padvi Pawra, Convict No.5291,
Age : 40 years, Occu. Convict, R/o At present
confined in Open Prison, Paithan. ...Petitioner.

Versus

The State of Maharashtra,

Through Superintendent,
Open Jail Paithan.

...Respondent

.....
Advocate for Petitioner : Mr. Jaiswal Rupesh A
APP for Respondent: Mrs. V.N. Patil-Jadhav
.....

AND
908 CRIMINAL WRIT PETITION NO.258 OF 2021

Maruti S/o Bhanudas Lokhande, C-5339,
Age : Major, Occ.. Nil, R/o At present
Harsul Prison, Tq. District Aurangabad.

...Petitioner.

Versus

1. The State of Maharashtra,
Through its Home Department
Mantralaya, Mumbai.
2. The Superintendent,
of the Open Prison at
District Aurangabad.

...Respondents

.....
Advocate for Petitioners : Ms. Sharada P. Chate
APP for Respondents: Mr. A.S. Shinde
.....

AND
910 CRIMINAL WRIT PETITION NO.260 OF 2021

Pawa S/o Ashok Malche, C-5311,
Age : Major, Occu. Nil, R/o At present
Harsul Prison, Tq. District Aurangabad.

...Petitioner.

Versus

1. The State of Maharashtra,
Through its Home Department
Mantralaya, Mumbai.
2. The Superintendent,
of the Open Prison at
District Aurangabad.

...Respondents

.....
Advocate for Petitioner : Ms. Sharada P. Chate
APP for Respondents: Mr. A.V. Deshmukh
.....

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AND

911 CRIMINAL WRIT PETITION NO.262 OF 2021

Ashok s/o Chinda Birahade, C-5308,
 Age : Major, Occu. Nil, R/o At present
 Paithan Open Prison, District Aurangabad. ...Petitioner.

Versus

1. The State of Maharashtra,
Through its Home Department
Mantralaya, Mumbai.
2. The Superintendent,
of the Open Prison at Paithan,
District Aurangabad. ...Respondents

.....
 Advocate for Petitioner : Ms. Sharda P. Chate
 APP for Respondents: Mr. A.V. Deshmukh

AND

912 CRIMINAL WRIT PETITION NO.264 OF 2021

Abdul Rahim Abdul Latif Khan, C-5301,
 Age : Major, Occu. Nil, R/o At present
 Harsul Prison, Tq. District Aurangabad. ...Petitioner.

Versus

1. The State of Maharashtra,
Through its Home Department
Mantralaya, Mumbai.
2. The Superintendent,
of the Open Prison at
District Aurangabad. ...Respondents

.....
 Advocate for Petitioner : Ms. Sharda P. Chate
 APP for Respondents: Mr. M.M. Nerlikar

AND

913 CRIMINAL WRIT PETITION NO.267 OF 2021

Nitin S/o Ambadas Nerlikar, C-5331
 Age : Major, Occu. Nil, R/o At present
 Harsul Prison, Tq. District Aurangabad. ...Petitioner.

Versus

1. The State of Maharashtra,

Through its Home Department
Mantralaya, Mumbai.

2. The Superintendent,
of the Open Prison,
District Aurangabad. ...Respondents

.....
Advocate for Petitioner : Ms. Sharda P. Chate
APP for Respondents: Mr. A.S. Shinde
.....

AND
914 CRIMINAL WRIT PETITION NO.270 OF 2021

Sainath S/o Annasaheb Waghchaure, C-5330
Age : Major, Occu. Nil, R/o At present
Harsul Prison, Tq. District Aurangabad. ...Petitioner.

Versus

1. The State of Maharashtra,
Through its Home Department
Mantralaya, Mumbai.
2. The Superintendent,
of the Open Prison at
District Aurangabad. ...Respondents

.....
Advocate for Petitioner : Ms. Sharda P. Chate
APP for Respondents: Mr. A.S. Shinde
.....

AND
915 CRIMINAL WRIT PETITION NO.271 OF 2021

Gafar S/o Eliyas Sayyed, C-5300,
Age : Major, Occu. Nil, R/o At present
Harsul Prison, District Aurangabad. ...Petitioner.

Versus

1. The State of Maharashtra,
Through its Home Department
Mantralaya, Mumbai.
2. The Superintendent,
of the Open Prison,
District Aurangabad. ...Respondents

.....
Advocate for Petitioner : Ms. Sharda P. Chate

APP for Respondents: Mrs. V.N. Patil Jadhav

.....

AND

917 CRIMINAL WRIT PETITION NO.280 OF 2021

Anand S/o Gonsalo Fosh, C-5322,
Age : Major, Occu. Nil, R/o At present
Harsul Prison, Tq. District Aurangabad.

...Petitioner.

Versus

1. The State of Maharashtra,
Through its Home Department
Mantralaya, Mumbai.
2. The Superintendent,
of the Open Prison,
District Aurangabad.

...Respondents

.....

Advocate for Petitioners : Ms. Sharda P. Chate
APP for Respondents: Mrs. V.N. Patil Jadhav

.....

AND

918 CRIMINAL WRIT PETITION NO.281 OF 2021

Rohidas S/o Yuraj Bhil, C-5328,
Age : Major, Occu. Nil, R/o At present
Harsul Prison, Tq. District Aurangabad.

...Petitioner

Versus

1. The State of Maharashtra,
Through its Home Department
Mantralaya, Mumbai.
2. The Superintendent,
of the Open Prison at
District Aurangabad.

...Respondents

.....

Advocate for Petitioner : Ms. Sharada P. Chate
APP for Respondents : Mr. M. M. Nerlikar

.....

AND

919 CRIMINAL WRIT PETITION NO.282 OF 2021

Shaikh Shafi Shaikh Mustafa, C-5286
Age : Major, Occu. Nil, R/o At present
Paithan Open Prison, District Aurangabad.

...Petitioner.

Versus

1. The State of Maharashtra,
Through its Home Department
Mantralaya, Mumbai.
2. The Superintendent,
of the Open Prison at Paithan,
District Aurangabad. ...Respondents

.....
Advocate for Petitioner : Ms. Sharda P. Chate
APP for Respondents: Mr. A.V. Deshmukh
.....

AND
957 CRIMINAL WRIT PETITION NO.323 OF 2021

Pandharinath S/o Dattu Bodke, C-182
Age : 40 years, Occu. Nil, R/o At present
Harsul Prison, District Aurangabad. ...Petitioner.

Versus

1. The State of Maharashtra,
Through its Home Department
Mantralaya, Mumbai.
2. The Superintendent,
of the Open Prison at
District Aurangabad. ...Respondents

.....
Advocate for Petitioners : Ms. Sharda P. Chate
APP for Respondents: Mr. A.S. Shinde
.....

AND
958 CRIMINAL WRIT PETITION NO.324 OF 2021

Bhagwan S/o Dattu Shinde, C-5159,
Age : 30 years, Occu. Nil, R/o At present
Harsul Prison, Tq. District Aurangabad. ...Petitioner.

Versus

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

of the Open Prison,
District Aurangabad.

...Respondents

.....
Advocate for Petitioner : Ms. Sharda P. Chate
APP for Respondents: Mr. S.J. Salgare
.....

**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 all these writ petitions, common and identical question is involved and therefore, all 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. It is further observed by the respondent authorities that all the petitioners are presently in the open jail at

Paithan and at present there are less number of inmates compared to the capacity of 500 inmates in the open jail.

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. Learned counsel submits that even though there are less number of inmates in the open jail at present, however, it cannot be ignored that most of the inmates in the open jail came to be released on emergency parole leave and there is no reason for the respondent authorities to discriminate these petitioners for the reason that there are less number of inmates in the open jail at present, as compared to the capacity of open jail of 500 inmates.

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 open jail safely by maintaining social distance, as at present less number of inmates are there in the open 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. All 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/