

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO. 294 OF 2021

Shivaji s/o Punjaram Gaikwad
Age 55 years, occ. Nil
R/o at present Paithan Open Prison
Dist. Aurangabad.

Petitioner

Versus

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

Respondents

Mrs. S.P. Chate, Advocate for the petitioner.
Mr. G.O. Wattamwar, APP for respondents.

**CORAM : V.K. Jadhav &
M.G. Sewlikar, JJ.**
DATE : 8th March, 2021.

ORAL JUDGMENT : (Per M.G. Sewlikar, J.)

1. Rule. Rule made returnable forthwith.
2. By consent, heard both the sides for final disposal.
3. This petition has been filed for challenging the order passed by the respondents vide which, emergency parole is refused to the petitioner.

4. Petitioner had filed application for emergency parole under Government Resolution dated 08.05.2020. The reason for rejection of application for emergency parole is that the petitioner had not availed of parole or furlough even once in the past. Another ground assigned for rejection is that the capacity of the prison at Paithan is 500 whereas only 77 inmates are there in the said prison. Therefore, maintaining of social distance is possible. There is no manpower for performing agricultural operations and for tending to the needs of the animals.

5. In the matter of Kavita w/o Dilip Baviskar Vs. State of Maharashtra decided on 30.06.2020, this Court (Coram : T.V. Nalawade & M.G. Sewlikar, JJ) has interpreted the conditions mentioned in the aforesaid Government Notification. This Court has held that the condition in the said Notification that the prisoner ought to have availed either furlough or parole in the past and ought to have returned to jail in time, is put to ensure that the prisoner will return to jail in time after the period of emergency parole is over. This Court has further held that the circumstance that the prisoner has not availed furlough or parole in the past cannot come in his way if he is otherwise eligible during that period to get furlough or parole.

6. The other grounds for rejection of parole cannot be sustained as the inmates who have been released on parole are likely to come back at any time. Therefore, the orders passed by the respondents cannot be sustained in law. Hence, the following order is passed :-

ORDER

- i) Petition is allowed.
- ii) Impugned order rejecting application for emergency parole is hereby quashed and set aside.
- iii) Application filed by the petitioner for emergency parole under Government Notification dated 08.05.2020 is allowed.
- iv) Petitioner be released on emergency parole on usual terms and conditions within seven days from today.
- v) Rule made absolute in those terms.

(M. G. SEWLIKAR)
Judge

(V. K. JADHAV)
Judge