

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

983 CRIMINAL WRIT PETITION NO.375 OF 2021

Amol Raghunath Chabukaswar C-8392
Age-Major years, Occ-Nil,
R/o: Aurangabad Central Prison,
Aurangabad, Tq. & Dist.Aurangabad.

..PETITIONER

-VERSUS-

1. The State of Maharashtra
Through, Secretary, Home department,
State of Maharashtra,
Mantralaya, Mumbai.
2. The Superintendent
of the Central Prison, Harsul,
Tq. & Dist. Aurangabad.

..RESPONDENTS

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Shri R.J. Nirmal, Advocate for the
petitioner;
Shri S.J. Salgare, APP for respondents

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**CORAM : RAVINDRA V.GHUGE
AND
B.U.DEBADWAR,JJ.**

DATE : 16th March, 2021

Oral Judgment (Per Ravindra V. Ghuge,J):-

1. Rule. Rule made returnable forthwith
and heard finally, by the consent of the
parties.

2. The petitioner is aggrieved by the order dated 04.03.2021, vide which, the application of the petitioner seeking emergency parole under rule 19(1)(C) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules 1959, has been rejected.

3. The learned Advocate for the petitioner contends that he has been convicted for the offence punishable under sections 302, 324 r/w 34 of the Indian Penal Code. There is no conviction under any special enactment. He was behind the bars for more than three years. There is no legal impediment for considering his application.

4. The learned Prosecutor has placed before us the chart which indicates that the petitioner was behind the bars as an under trial from 01.09.2011 till 23.04.2012 and after conviction, as on 04.03.2021, he has been serving out his sentence for two years, four months and eleven days. Adding the period, as an under trial, of seven months and twenty three days, he was behind the bars for three years and four days.

5. We find from the impugned order that

the Incharge Superintendent, Aurangabad Central Jail Shri R.R. Bhosale has rejected the application of the petitioner on the ground that he did not avail of any parole or furlough leave anytime before.

6. Considering the above reason, we are tired of setting aside such type of orders. In hundreds of cases, we have held that if the applicant does not avail of furlough or parole leave on at least two occasions, it would not be an impediment for entertaining his application under section 19(1)(C) considering the spread of Covid-19 pandemic. We have transmitted such orders to the Superintendents of all Jails and have also requested the Additional Director General of Police (Prisons) at Pune to direct all such Jail Superintendents to refrain from passing such orders. Yet, the impugned order came to be passed on 04.03.2021, thereby, creating unnecessary litigation and compelling the petitioner to approach this Court.

7. Mr.Salgare, learned APP submits that there is no other legal impediment for entertaining the application of the petitioner.

8. In view of the above, this Petition is allowed. The impugned order is quashed and set aside.

9. The application preferred by the petitioner dated 3rd March, 2021 stands allowed. The petitioner shall be released on emergency parole leave on 20th March, 2021 subject to compliance of the regular conditions as are prescribed.

10. The author of the impugned order Shri. R.R. Bhosale shall pay Rs.5,000/- as costs from his salary and deposit the same in the Jail account of the petitioner. The said amount be credited to the Jail account of the petitioner within 15 days from today.

11. Rule is made absolute in the above terms.

(B.U.DEBADWAR,J.)

(RAVINDRA V. GHUGE,J.)