

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

**CRIMINAL WRIT PETITION NO. 384 OF 2021**

Ragunath s/O Gangya Bhoyee, C-5294

Age: 45 years, Occ. Nil.,

R/o: At present Harsul Prison,

Taluka and District Aurangabad

.. Petitioner

Versus

1. The State of Maharashtra  
Through its Home Department  
Mantryala Mumbai

2. The Superintendent of the Prison at  
Paithan, District Aurangabad

.. Respondents

...

Mrs. Sharda P. Chate, Advocate for petitioner

Mr. S.J. Salgare, APP for respondents

....

**CORAM : V. K. JADHAV AND  
S. G. DIGE, JJ.**

**DATE : 12<sup>th</sup> JULY, 2021**

**JUDGMENT ( PER : S. G. Dige, J. ) :-**

1. Rule. Rule made returnable forthwith. By consent, heard finally at admission stage.

2. By way of this petition, the petitioner is seeking direction to respondent No. 2 to release him on emergency parole as per Government Notification dated 8<sup>th</sup> May 2020, by quashing order dated 2<sup>nd</sup> March 2021, passed by respondent No. 2.

3. The petitioner has been convicted for the offence punishable under Section 302 of the Indian Penal Code (for short “IPC”). He has undergone more than eight years sentence at Paithan Open Prison, Paithan, District Aurangabad. During the conviction period, the petitioner had filed an application seeking emergency parole to respondent No. 2, but it came to be rejected on 2<sup>nd</sup> March, 2021 stating therein that as per Notification dated 8<sup>th</sup> May 2020, sub-rule (ii) of Rule (2) of Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 (for short “Rule 1959”) the petitioner is not entitled to release on emergency parole leave, wherein he had not availed leave on two occasions and also he had not availed single leave. The application for parole has also been rejected on the ground of shortage of prisoners as most of them are on leave.

4. Learned counsel for the petitioner submits that the petitioner is entitled for emergency parole. The reasons given by respondent No. 2 are not only unreasonable, absurd but also against Article 14 (right to equality) and Article 21 (right to life liberty) of the Constitution of India.

5. Learned counsel for petitioner further submits that this issue is no longer *res-integra* in view of Judicial Pronouncement of this Court (Coram : T. V. Nalawade and Shrikant D. Kulkarni, JJ.) ***in Criminal Writ Petition No. 571 of 2020 decided on 30-06-2020 (Kavita w/o Dilip Baviskar Vs. State of Maharashtra)*** and thereafter in various cases, this

Court has interpreted the condition laid down in aforesaid Government Notification and held that said condition is to ensure that prisoner should return the jail on his own in time after emergency parole period is over.

6. Learned APP appearing for respondents-authorities supports the impugned order and submits that the order passed by respondent authority is as per the condition laid down in notification dated 8<sup>th</sup> May, 2020. Hence, the same is correct and valid.

7. We have carefully gone through the judgment and order passed by this Court in the case of ***Kavita Dilip Baviskar*** (supra), this Court in paragraph Nos. 4 and 5 of the said judgment has made following observations :

*“4. In the notification dated 8<sup>th</sup> 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.”*

8. 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 he was not released on parole or furlough leave. Apart from this, we agree with the submissions made by learned counsel for the petitioner that respondent-authorities cannot make discrimination as against the petitioners for the reason that petitioner can very well stay in open jail safely by maintaining social distance, as 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.

9. In view of above, we are inclined to allow the present writ petition. Hence, we proceed to pass the following order:

**ORDER**

- (i) The Criminal Writ Petition is allowed.
- (ii) The order 2<sup>nd</sup> March 2021 passed by respondent No. 2 rejecting emergency parole is hereby quashed and set aside.
- (iii) The application filed by the petitioner for emergency parole under Government Notification dated 8<sup>th</sup> May, 2020 is hereby allowed.
- (iv) The petitioner be released on emergency parole on usual terms and conditions within seven days from the date of this order.
- (v) Rule made absolute in the above terms.
- (vi) Authenticated copy of the order is allowed to both sides.

( S. G. DIGE )  
JUDGE

( V. K. JADHAV )  
JUDGE