

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

CRIMINAL WRIT PETITION NO. 746 OF 2021

Madhav s/o Haribhau Munjal (C-8460)

Age 48 years, Occ. Nil,

R/o. At present Harsul Prison,

Tq. and District Aurangabad

...Petitioner

versus

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

2. The Superintendent of the
Central prison, Harsul
District Aurangabad

...Respondents

.....

Mrs. Sharda P. Chate, advocate for the petitioner

Mr. S. J. Salgare, A.P.P. for respondents

.....

AND

CRIMINAL WRIT PETITION NO. 779 OF 2021

Gangadhar @ Baburao s/o Nagorao

Ambhore (C-8704)

Age 48 years, Occ. Nil,

R/o. At present Harsul Prison,

Tq. and District Aurangabad

...Petitioner

versus

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

2. The Superintendent of the
Central prison, Harsul
District Aurangabad

...Respondents

.....

Mrs. Sharda P. Chate, advocate for the petitioner

Mr. M. M. Nerlikar, A.P.P. for respondents

.....

AND
CRIMINAL WRIT PETITION NO. 647 OF 2021

Nazira Anwarkhan Pathan (C-8010),
 Age major, Occ. Nil,
 R/o. At present confined in Aurangabad
 open prison, Aurangabad
 Tq. and District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
 Through under Secretary
 Home Department
 Mantralaya, Mumbai

2. The Superintendent ,
 Central Prison, Harsul
 District Aurangabad

...Respondents

.....

Mrs. M. V. Narwade, advocate for the petitioner
 Mr. S. J. Salgare, A.P.P. for respondents

.....

AND
CRIMINAL WRIT PETITION NO. 679 OF 2021

Arjun Kacharu Unavane (C-5117),
 Age 40 years, Occ. Convict,
 R/o. At present confined in open prison
 Paithan, Tq. Paithan,
 District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
 Through Superintendent
 Open Jail, Paithan,
 District Aurangabad

2. D.I.G. Prisons,
 Aurangabad

..Respondents

.....

Mr. Rupesh Jaiswal, advocate for the petitioner
 Mr. A. S. Shinde, A.P.P. for respondents

.....

AND
CRIMINAL WRIT PETITION NO. 709 OF 2021

Irun Ilichand Chavan (C-80),
Age major, Occ. Nil,
R/o. At present confined in Aurangabad
open prison, Aurangabad
Tq. and District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through under Secretary
Home Department
Mantralaya, Mumbai

2. The Superintendent of the
Aurangabad open Prison,
District Aurangabad

...Respondents

.....

Mrs. M. V. Narwade, advocate for the petitioner
Mr. A.S. Shinde, A.P.P. for respondents

.....

AND
CRIMINAL WRIT PETITION NO. 747 OF 2021

Bhimrao s/o Shankar Kamble (C-4928)
Age major, Occ. Nil,
R/o. At present Harsul Prison,
Tq. and District Aurangabad

...Petitioner

versus

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

2. The Superintendent of the
Open prison, Aurangabad
District Aurangabad

...Respondents

.....

Mrs. Sharda P. Chate, advocate for the petitioner
Mr. M. M. Nerlikar, A.P.P. for respondents

.....

AND
CRIMINAL WRIT PETITION NO. 748 OF 2021

Raosaheb Narayan Shelke (C-8446)
Age 50 years, Occ. Nil,
R/o. At present Harsul Prison,
Tq. and District Aurangabad

...Petitioner

versus

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

2. The Superintendent of the
Central prison, Harsul
District Aurangabad

...Respondents

.....

Mrs. Sharda P. Chate, advocate for the petitioner
Mr. A.S. Shinde, A.P.P. for respondents

.....

AND
CRIMINAL WRIT PETITION NO. 718 OF 2021

Deepak s/o Dattatraya Jawale (C-8153),
Age major, occ. Convict
R/o. At present confined in Harsul
Central Jail, Aurangabad
District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through Secretary, Home Department
Mantralaya, Mumbai - 32.

2. Superintendent,
Central Jail Harsul, Aurangabad
District Aurangabad

..Respondents

.....

Mr. Rupesh Jaiswal, advocate for the petitioner
Mr. M. M. Nerlikar, A.P.P. for respondents

.....

AND
CRIMINAL WRIT PETITION NO. 719 OF 2021

Abhay s/o Bhaskar Pore (C-8154),
Age major, Occ. Convict
R/o. At present confined in Harsul
Central Jail, Aurangabad
District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through Secretary, Home Department
Mantralaya, Mumbai - 32.
2. Superintendent,
Central Jail Harsul, Aurangabad
District Aurangabad

..Respondents

.....

Mr. Rupesh Jaiswal, advocate for the petitioner
Mr. A.S. Shinde, A.P.P. for respondents

.....

AND
CRIMINAL WRIT PETITION NO. 711 OF 2021

Machindra s/o Gulab Gaikwad (C-8358),
Age major, Occ. Convict
R/o. At present confined in Harsul
Central Jail, Aurangabad
District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through Secretary, Home Department
Mantralaya, Mumbai - 32.
2. Superintendent,
Central Jail Harsul, Aurangabad
District Aurangabad

..Respondents

.....

Mr. Rupesh Jaiswal, advocate for the petitioner
Mr. M.M. Nerlikar, A.P.P. for respondents

.....

**AND
CRIMINAL WRIT PETITION NO. 713 OF 2021**

Vishnu s/o Haridas Dake (C-8875),
Age major, Occ. Convict
R/o. At present confined in Harsul
Central Jail, Aurangabad
District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through Secretary, Home Department
Mantralaya, Mumbai - 32.
2. Superintendent,
Central Jail Harsul, Aurangabad
District Aurangabad

..Respondents

.....

Mr. Rupesh Jaiswal, advocate for the petitioner
Mr. A.S. Shinde, A.P.P. for respondents

.....

**AND
CRIMINAL WRIT PETITION NO. 717 OF 2021**

Sunil s/o Ramesh Jadhav (C-8274),
Age major, Occ. Convict
R/o. At present confined in Harsul
Central Jail, Aurangabad
District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through Secretary, Home Department
Mantralaya, Mumbai - 32.
2. Superintendent,
Central Jail Harsul, Aurangabad
District Aurangabad

..Respondents

.....

Mr. Rupesh Jaiswal, advocate for the petitioner
Mr. S. J. Salgare, A.P.P. for respondents

.....

**AND
CRIMINAL WRIT PETITION NO. 720 OF 2021**

Dadasaheb s/o Bhausahab Janrao (C-8874),
Age major, Occ. Convict
R/o. At present confined in Harsul
Central Jail, Aurangabad
District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through Secretary, Home Department
Mantralaya, Mumbai - 32.
2. Superintendent,
Central Jail Harsul, Aurangabad
District Aurangabad

..Respondents

.....

Mr. Rupesh Jaiswal, advocate for the petitioner
Mr. S.J. Salgare, A.P.P. for respondents

.....

**AND
CRIMINAL WRIT PETITION NO. 722 OF 2021**

Pavan s/o Pramod Kulkarni (C-9176),
Age major, Occ. Convict
R/o. At present confined in Harsul
Central Jail, Aurangabad
District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through Secretary, Home Department
Mantralaya, Mumbai - 32.
2. Superintendent,
Central Jail Harsul, Aurangabad
District Aurangabad

..Respondents

.....

Mr. Rupesh Jaiswal, advocate for the petitioner
Mr. S.J. Salgare, A.P.P. for respondents

.....

**AND
CRIMINAL WRIT PETITION NO. 723 OF 2021**

Ramdas s/o Gyandev Reddy (C-8789),
Age 45 years, Occ. Convict
R/o. At present confined in Harsul
Central Jail, Aurangabad
District Aurangabad

...Petitioner

versus

1. The State of Maharashtra
Through Secretary, Home Department
Mantralaya, Mumbai - 32.
2. Superintendent,
Central Jail Harsul, Aurangabad
District Aurangabad

..Respondents

.....

Mr. Rupesh Jaiswal, advocate for the petitioner
Mr. M.M. Nerlikar, A.P.P. for respondents

.....

**AND
CRIMINAL WRIT PETITION NO. 601 OF 2021**

Archana w/o Laxman Mhaske (C-9365),
Age 27 years, Occ. Convict
R/o. At present confined in Harsul
Central Jail, Aurangabad
Permanent resident of
Aroti, Tq. Kalamnuri,
District Hingoli

...Petitioner

versus

The State of Maharashtra
Through Superintendent,
Central Jail, Aurangabad
District Aurangabad

..Respondent

.....

Mr. Rupesh Jaiswal, advocate for the petitioner
Mr. S.J. Salgare, A.P.P. for respondent

.....

**CORAM : V. K. JADHAV AND
S. G. DIGE, JJ.
RESERVED ON : 14.07.2021
PRONOUNCED ON : 20.08.2021**

O R D E R (PER V. K. JADHAV, J.) :-

1. By consent of the parties, heard finally at admission stage.
2. Since in all these criminal writ petitions common question of law has been raised, it would be appropriate to decide these writ petitions by this common order.
3. We have formed three categories of petitions as per the issues raised therein. Category I is about late surrender by prisoner, category II is about eligibility for parole in terms of provisions of Rule 4 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 ("said Rules", for short) and category III is about three years not completed by prisoner for grant of parole. Details of the petitions as per the above stated categories is as under:

**CATEGORY NO. I
LATE SURRENDER**

Sr.No.	Cri. W.P. No.	Name of Prisoner and convict No.	Conviction under section and date of conviction	Actual imprisonment undergone	Reason for rejection of emergency parole
1	746 of 2021	Madhav Haribhau Munjal (C-8460)	302 of I.P.C. 31.7.2013	9 years, 2 months 22 days	2 days late

2	779 of 2021	Gangadhar @ Baburao Nagorao Ambhore (C-8704)	302, 498 of I.P.C. 4.1.2014	7 years	2 days late
3	647 of 2021	Nazira Anwarkhan Pathan (C-8010)	302 of I.P.C. 8.8.2014 (9.1.2001)	6 years, 9 months 11 days	1 day late
4	679 of 2021	Arjun Kacharu Unavane (C-5117)	302 of I.P.C. 25.08.2010	12 years, 2 months	61 days late
5	709 of 2021	Irun Ilichand Chavan (C-80)	302 of I.P.C. 21.11.2008	13 years, 4 months and 10 days	96 days late
6	747 of 2021	Bhimrao Shankar Kamble (C-4928)	302 of I.P.C. 30.7.2007	14 years, 1 month, 13 days	4 days late
7	748 of 2021	Raosaheb Narayan Shelke (C-8446)	302 of I.P.C. 24.10.1997 (29.1.2007)	8 years, 5 months, 4 days	1512 days, 4 days, 656 days.

CATEGORY NO. II
ELIGIBILITY FOR PAROLE IN TERMS OF PROVISIONS OF RULE 4 OF THE RULES

Sr.No.	Cri. W.P. No.	Name of Prisoner and convict No.	Conviction under section and date of conviction	Actual imprisonment undergone	Reason for rejection of emergency parole
1	718 of 2021	Deepak Dattatraya Jawale (C-8153)	376 (2) (g) of I.P.C. and 3(2) of M.C.O.C. Act 22.08.2016	11 years, 1 month 20 days	Bar of Rule 4(12) of the Rules
2	719 of 2021	Abhay Bhaskar Pore (C-8154)	376 (2) (g) of I.P.C. and 3(2) of M.C.O.C. Act 22.08.2016	11 years, 1 month 20 days	Bar of Rule 4(12) of the Rules
3	711 of 2021	Machindra Gulab Gaikwad (C-8358)	376 (d) of I.P.C. 17.07.2018	5 years, 8 months and 9 days.	Bar of Rule 4(12) of the Rules

4	713 of 2021	Vishnu Haridas Dake (C-8875)	376(d) of I.P.C. 05.05.2018	5 years, 7 months, 3 days	Bar of Rule 4(12) of the Rules
5	717 of 2021	Sunil Ramesh Jadhav (C-8274)	376(2) (I) I.P.C. 08.11.2017	5 years, 8 months and 6 days	Bar of Rule 4(12) of the Rules
6	720 of 2021	Dadasaheb Bhausaheb Janrao (C-8874)	376(d) of I.P.C. 05.05.2018	5 years, 7 months, 3 days	Bar of Rule 4(12) of the Rules
7	722 of 2021	Pavan Pramod Kulkarni (C-9176)	376 (2) (n) of I.P.C. 7.2.2020	3 years, 9 months, 13 days	Bar of Rule 4(12) of the Rules
8	723 of 2021	Ramdas Gyandev Reddy (C-8789)	376 (2) (I) of I.P.C. 7.4.2017	5 years, 11 months	Bar of Rule 4(12) of the Rules

CATEGORY NO. III
THREE YEARS NOT COMPLETED FOR GRANT OF PAROLE

Sr.No.	Cri. W.P. No.	Name of Prisoner and convict No.	Conviction under section and date of conviction	Actual imprisonment undergone	Reason for rejection of emergency parole
1	601 of 2021	Archana Laxman Mhaske (C-9365)	302 of I.P.C. 20.03.2021	02 months	Bar of Rule 3(C)(1) of the Rules

4. Learned counsel for the petitioners in respective writ petitions submit that the Government of Maharashtra in exercise of the powers conferred by clauses (5) and (28) of Section 59 of the Prisons Act, in its application to the State of Maharashtra, has made the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2020 to amend the said Rules of 1959. In terms of the said amendment to sub rule (1) of Rule 19 of the said Rules, after clause

(B), clause (C) has been inserted. The said clause has been inserted on declaration of epidemic under the Epidemic Diseases Act, 1897, by the State Government and in terms of sub-clause (ii) of the added clause (C), for convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by Superintendent of Prison, on certain conditions. In terms of proviso to sub-clause (ii) of clause (C), the said directions shall not apply to convicted prisoner convicted for serious economic offences or bank scams or offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA etc. which provides for additional restrictions on grant of bail in addition to those under the Code of Criminal Procedure, 1973 and also presently to foreign national and prisoners having their place of residence out of the State of Maharashtra.

5. Learned counsel submits that so far as the petitions in category II are concerned, except writ petition Nos. 718 of 2021 and 719 of 2021, the writ petitions Nos. 711, 713, 717, 720, 722 and 723 of 2021 in category No. II pertain to conviction and passing of sentence for the offences punishable under Section 376(d) or Section 376(2)(i) or Section 376 (2)(n) of I.P.C. However, their applications for release on emergency parole came to be rejected by considering the bar of Rule 4(12) of the said Rules.

6. Learned counsel appearing for the petitioners submit that so far as the category I is concerned, it is about late return and their applications seeking emergency parole came to be rejected mainly on the ground of their late return to the prison on earlier release on parole or furlough.

7. Learned counsel appearing for the petitioners submit that clauses (A) and (B) of sub-rule (1) of Rule 19 of the said Rules, prescribe the provision about Emergency parole whereas sub-rule (2) of Rule 19 of the said Rules prescribes the provision about regular parole. So far as regular parole is concerned, all the prisoners eligible for furlough shall be eligible for regular parole for certain reasons as detailed in sub-rule (2) of Rule 19 of the said Rules. It is submitted that the eligibility criteria for regular parole is in terms of the provisions of Rule 4 of the said Rules. Learned counsel for the petitioners submit that so far as the provisions of emergency parole are concerned, clauses (A) and (B) of sub-rule (1) of Rule 19 of the said Rules prescribe that all convicted prisoners except foreigner and death sentenced prisoners may be eligible for emergency parole for 45 days for the reasons as detailed in clauses (A) and (B). Learned counsel submit that there is mark difference between the eligibility criteria for the regular parole and the emergency parole. The amendment to Rule 19, as referred above, is by way of insertion of

clause (C) to Rule 19 sub-rule (1) and as such, all convicted prisoners are entitled to be released on parole except for the reasons as stated in sub-clause (ii) of the added clause (C), so also its proviso. Learned counsel for the petitioners submit that in the proviso it is stated that the aforesaid directions shall not apply to convicted prisoner convicted for serious economic offences or bank scams or offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA etc. However, that does not cover the prisoners convicted for the offence under Section 376 of I.P.C. simplicitor without any conviction under any Special Act. It is submitted that, however, the Superintendent of District Prison has rejected the applications seeking COVID-19 epidemic emergency parole of the convicted persons as per sub-clause (ii) by referring the provisions of Rule 4(12) of the said Rules, which is contrary to the provisions of Rule 19 (1) (A) and (B) and the added clause (C) of the said Rules.

8. Learned counsel for the petitioners submit that the Full Bench of this Court at its Principal Seat, in ***Pintu s/o Uttam Sonale vs. The State of Maharashtra*** [2021 ALL MR (Cri.) 822] has held that the provisions of emergency parole as brought about by incorporation of sub-rule (C) read with its proviso would cover the prisoners convicted under the provisions of Protection of Children from Sexual Offences

Act, 2012. In the instant bunch of matters, as per category II, the petitioners in writ petition Nos. 711, 713, 717, 720, 722 and 723 of 2021 are convicted for the offences punishable under Section 376 (d) or Section 376(2) (i) or Section 376 (2) (n) of IPC simplicitor and not alongwith any other offence under Special Act including the Protection of Children from Sexual Offences Act, 2012.

9. Learned counsel for the petitioners submit that as per Rule 23A of the Maharashtra Prisons (Remission System) Rules, 1962, for the prisoner coming late from parole and furlough the proportion of cutting in remission has been determined. If the prisoner surrenders himself to the prison authorities on the next day after expiry of the period of sanctioned parole, only strict warning is prescribed. For the period of late surrender from 2 to 15 days up to 6 months or more, the proportion of cut in remission is prescribed. So far as the period of 6 months or more of late surrender, the prisoner remission shall be cut permanently. Similar provisions are also there for the prisoners coming late from furlough. Furthermore, as per Circular No.2015 Kaksha-9 (5) dated **8.7.2015** if the remission has been cut permanently on account of late surrender, for a period of 6 months or more, an entry be taken in the remission register considering further good conduct in the jail. It is submitted that in view of the same, as per category I, the applications of the prisoners should not have been

rejected for late surrender by two days, or maximum 96 days in one case, which is less than the period of six months.

10. Mr. Rupesh Jaiswal, learned counsel for the petitioners placed reliance on the judgment of the Supreme Court in the case of ***Asfaq vs. The State of Rajasthan***, reported in ***2018 ALL SCR (Cri.) 227*** wherein the Supreme court held that the theory of criminology underlines 'reformation' as one of the main objectives which provides justification for letting of the life convicts for short period on parole not only to afford opportunities to such convicts to solve their personal and family problems but also to maintain their links with the society. The Hon'ble Supreme Court has observed that mere nature of offence committed by the accused should not be a factor to deny parole out-rightly. Learned counsel Mr. Jaiswal, in order to substantiate his submissions placed reliance on the following cases:

- i) ***Pintu s/o Uttam Sonale vs. The State of Maharashtra***, reported in 2021 ALL MR (Cri.) 822;
- ii) ***Asfaq vs. State of Rajasthan and others***, reported in 2018 ALL SCR (Cri.) 227;
- iii) Order dated 28.8.2020 in criminal writ petition No.ASDB-LD-VC 265 of 2020 (***Kalyan s/o Bansidhar Rao Renge v. The State of Maharashtra and Anr.***) passed by the Division Bench of this court at Principal Seat Bombay.

- iv) Order dated 07.12.2020 in criminal writ petition (St.) No. 3080 of 2020 (**Ravindrasing @ Munna s/o Dilipsing Parihar v. The State of Maharashtra and Another**) passed by the Division Bench of this court at Principal Seat Bombay.
- v) Order dated 07.12.2020 in criminal writ petition (St.) No. 3077 of 2020 (**Mahesh Vasantrao Motaphale v. The State of Maharashtra and Another**) passed by the Division Bench of this court at Principal Seat Bombay.
- vi) Order dated 13.10.2020 in criminal writ petition No. 1135 of 2020 (**Shubham s/o Devidas Gajbhare v. The State of Maharashtra**) passed by the Division Bench of this Court.
- vii) **Kantilal Nandlal Jaiswal vs. Divisional Commissioner, Nagpur and Anr.** reported in 2019 ALL MR (Cri.) 4003 (F.B.).
- viii) Judgment dated 09.07.2021 in writ petition No. 2386 of 2021 (**Futermal Kapoorji Borana v. The State of Maharashtra and others**) delivered by the Division Bench of this court at Principal Seat Bombay.
- ix) Judgment dated 17.12.2020 in writ petition (St.) No. 4216 of 2020 (**Santosh Mahadev Shinde v. The State of Maharashtra and others**) delivered by the Division Bench of this court at Principal Seat Bombay.
- x) **Maharashtra Public Service Commissioner vs. Pankajkumar C. Dabhire and others**, reported in 2019(3) ALL MR 206;
- xi) **Raghunath Rai Bareja and Anr. vs. Punjab National Bank**

and Ors. reported in 2007 ALL SCR 1641;

- xii) Judgment dated 01.12.2020 in criminal writ petition (St.) No. 3210 of 2020 (**Yakub s/o Hussain Panwale v. The State of Maharashtra**) delivered by the Division Bench of this court at Principal Seat Bombay.
- xiii) Judgment dated 17.12.2020 in criminal writ petition (St.) No. 3481 of 2020 (**Ramesh s/o Poona Sapkale v. The State of Maharashtra**) delivered by the Division Bench of this court at Principal Seat Bombay.
- xiv) Order dated 28.07.2020 in criminal writ petition ASDB-LD-VC No. 87 of 2020 (**Sobha Sitaram Tayade v. State of Maharashtra**) passed by the Division Bench of this court at Principal Seat Bombay.
- xv) **Santosh Sahebrao Nagargoje vs. The State of Maharashtra and others**, reported in 2020 ALL MR (Cri.) 3101.
- xvi) Judgment dated 21.12.2020 in criminal writ petition (St.) No. 3178 of 2020 (**Mahesh Lalchand Bohra v. The State of Maharashtra and another**) delivered by the Division Bench of this court at Principal Seat Bombay.
- xvii) Order dated 7.12.2020 in Criminal Application No. 2073 of 2020 (**The State of Maharashtra vs. Guddu @ Kansha Wahab Shaikh**) passed by the Division Bench of this Court.

11. Learned counsel Ms. Sharda Chate, in order to substantiate her submissions placed reliance on the following cases:

- i) Judgment dated 3.5.2021 in Criminal Writ petition No. 513 of 2021 (***Sherkhan Mirbas Khan Pathan vs. State of Maharashtra***) delivered by the Division Bench of this Court.
- ii) Order dated 4.8.2020 in Criminal Writ petition No. 759 of 2020 (***Aquino s/o Avith Martis vs. State of Maharashtra***) passed by the Division Bench of this Court.
- iii) Order dated 7.8.2020 in Criminal Writ petition No. 791 of 2020 (***Akbar s/o Sayed Shaikh vs. State of Maharashtra***) passed by the Division Bench of this Court.

12. Learned APP submits that the Supreme Court has taken cognizance of the spread of the Novel Corona Virus (COVID-19) in *Suo Motu Writ Petition (Civil) No. 1 of 2020*. By order dated 16.03.2020 in the said *Suo Motu Writ Petition*, the Supreme Court has observed about the overcrowding in prisons making it difficult for the prisoners to maintain social distancing. Thus, the Supreme Court has felt that there is imminent need to take steps on an urgent basis to prevent the contagion of Covid-19 virus in our prisons. Thus, the Supreme Court has issued show-cause notices to all the States/Union Territories as to why directions should not be issued for

dealing with the present health crisis arising out of Corona virus (Covid-19) in the country and further to suggest measures which should be adopted for the medical assistance to the prisoners in all jails and the juveniles lodged in the Remand Homes.

13. Learned APP submits that on 23.03.2020, the Supreme Court took up the said Suo Motu Writ Petition for further hearing and looking into the possible threat of transmission and fatal consequences of Covid-19 in our prisons, directed each State/Union Territory to constitute a High Powered Committee (HPC) to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. The Supreme Court has left it open for the HPC to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

14. By order dated 07.04.2020, the Supreme Court in the said Suo Motu Writ Petition has given certain directions to the Union of India to ensure that all the prisoners having been released by the States/Union Territories be provided transportation to reach their

homes or given the option to stay in temporary shelter homes for the period of lockdown.

15. By order dated 13.04.2020 in the said Suo Motu Writ Petition, the Supreme Court has made it clear that the purpose of earlier orders directing the States/Union Territories to release the prisoners from their respective prisons was to ensure the States/Union Territories to assess the situation in their prisons determine the category of prisoners to be released. The Supreme Court has also given certain specific directions in this order.

16. Thereafter time to time, the Supreme Court by orders dated 13.05.2020, 06.07.2020 and 01.06.2021 gave certain directions.

17. Learned APP submits that meanwhile, in terms of the order dated 23.03.2020 passed by the Supreme Court in Suo Motu Writ Petition (Civil) No. 1 of 2020 as referred above, the HPC has been constituted on 24.03.2020 in the State of Maharashtra. The HPC on 25.03.2020, 10.05.2020 and 11.05.2020 has given certain directions for release of prisoners by considering nature of offence, severity of offence, number of years to which the convict has been sentenced and other relevant factors.

18. Learned APP submits that in the backdrop of all these orders and the decisions taken by the HPC, the State of Maharashtra by Notification dated 16.04.2018, amended the said Rules vide Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rules, 2018. Further, by Notification dated 08.05.2020, The said Rules came to be amended in its application to the State of Maharashtra and Rule 19(1) (C) came to be inserted.

19. Learned APP submits that the Public Interest Litigation No. 44 of 2020 came to be filed by the National Alliance for People's Movements seeking quashing of the decision of the HPC dated 25.03.2020 to the extent of Clauses (iii), (iv) and (vii) of paragraph 8, decision/minutes of the HPC meeting dated 11.05.2020 excluding certain categories of offences provided in paragraph 5(i) and 5(ii) for the purpose of grant of interim bail and corrigendum dated 18.05.2020 of the minutes of meeting of the HPC dated 11.05.2020 to the extent of clarification that the class and/or category of cases determined by the HPC for temporary release be not read as a direction made by it for mandatory release of the prisoners falling in that category or class and a further clarification that case of every prisoner be considered on case to case basis for deciding the temporary release of such prisoner. In the said PIL a further relief has been sought seeking direction to the respondents to release the

prisoners convicted with life imprisonment without insisting that they should have been released in the past at least twice, either on furlough or parole. The Division Bench of this Court at its Principal Seat, headed by the Hon'ble the Chief Justice (Coram : Dipankar Datta, CJ. & Madhav J. Jamdar, J.) in para 39 of the Judgment has observed that the HPC has balanced the rights of the prisoners to maintain maximum possible distancing to contain the spread of Covid-19 as well as the rights of the society. The Hon'ble the Chief Justice, adding to the said judgment his own views, observed that there is no reason to hold that the HPC acted in a manner warranting interference. The Hon'ble the Chief Justice further held that the recommendations made by the HPC are not arbitrary and do not offend the equality clause in Article 14.

20. Learned APP submits that being aggrieved by the order passed in PIL No. 44 of 2020, the petitioners therein approached to the Supreme Court by filing Special Leave Petition (Cri) No. 4116 of 2020. By order dated 22.09.2020, the Supreme Court has dismissed the SLP by granting liberty for raising grievance by an individual undertrial/convicted prisoner only if such person has been discriminated as against the prisoner in the same category for which the benefit has been provided by the categorisation made by the HPC.

21. Learned APP thus submits that in term of the amendment in its application to the State of Maharashtra to Rule 4, considering the amendment to Rule 19(1)(C) in its application to the State of Maharashtra, the intention and purpose behind the said amendment in terms of the directions given by the Supreme Court in Suo Motu Writ Petition No. 1 of 2020 and the decisions taken by the HPC time to time as referred above, the eligibility criteria as per the amendment to Rule 4 in the year 2018 would also be equally applicable to the added provision of clause (C) in its application to the State of Maharashtra in sub-Rule 19(1).

22. Learned APP submits that in the case of **Milind Ashok Patil & Ors. v. State of Maharashtra & Ors.** [Criminal Writ Petition No. 65 of 2020 decided by this Court (Coram : S. S. Shinde & Madhav J. Jamdar, JJ.)], though the issue was different, by order dated 16.07.2020 this Court has considered the said amendment to clause (C) of Rule 19(1) of the said Rules.

23. Learned APP has further placed his reliance on the following cases to substantiate his contention:

- i. **Futermal Kapoorji Borana v. The State of Maharashtra and Ors.** [Criminal Writ Petition No. 444 of 2021 decided by this Court at its Principal Seat at

Bombay on 08.03.2021]

- ii. ***Dilshad Hussain Siddiqui v. The State of Maharashtra and Anr.*** [Criminal Writ Petition No. 231 of 2021 decided by this Court at its Principal Seat at Bombay on 16.02.2021]
- iii. ***Pintu s/o Uttam Sonale (C-10855) v. The State of Maharashtra*** [Criminal Writ Petition (Stamp) No. 3206 of 2020 decided by the Full Bench of this Court at its Principal Seat on 06.11.2020]
- iv. ***Shubham s/o Devidas Gajbhare v. The State of Maharashtra*** [Criminal Writ Petition No. 1135 of 2020 decided by this Court on 13.10.2020]
- v. ***Vijay Vilasrao Sutare, C-8986 v. The State of Maharashtra and Anr.*** [Criminal Writ Petition No. 972 of 2020 decided by this Court on 14.09.2020]
- vi. ***Milind s/o Govind Pandit (C-8758) v. The State of Maharashtra*** [Criminal Writ Petition No. 1244 of 2020 decided by this Court on 21.10.2020]
- vii. ***Aziz Khan Mohd. Khan Pathan (C-7985) v. The State of Maharashtra and Others*** [Criminal Writ Petition No. 1439 of 2020 along with connected Writ Petitions decided by this Court on 23.11.2020]

viii. ***The State of Maharashtra v. Anil s/o Maruti Jadhav***

[Criminal Application No. 1577 of 2020 along with connected Application decided by this Court on 05.11.2020]

24. We have heard learned counsel for the petitioners in respective petitions and the learned APP for the respondent-State. With their able assistance, we have perused the memo of petitions, annexures thereto, various orders passed by the Hon'ble Supreme Court as well as this Court, so also the minutes of meetings of HPC and the decisions taken by it time to time.

25. In Suo Motu Writ Petition (Civil) No. 1 of 2020, by order dated 16.03.2020 the Supreme Court has taken a note of the instructions/directions issued by the Government of India about maintaining social distancing to prevent the spread of Covid-19 virus and further observed that the prisons are overcrowded, making it difficult for the prisoners to maintain social distancing. The Supreme Court has also taken a note of the various studies on this point and observed that the prison inmates are highly prone to contagious viruses. The Supreme Court has opined that there is an imminent need to take steps on an urgent basis to prevent the contagion of Covid-19 virus in our prisons. For all these reasons, the Supreme

Court has issued show-cause notices to the Chief Secretaries/Administrators, Home Secretaries, Directors General of all the Prisons and Department of Social Welfare of all the States and the Union Territories to show cause why directions should not be issued for dealing with the present health crisis arising out of Corona virus (Covid-19) in the country and further to suggest immediate measures which should be adopted for the medical assistance to the prisoners in all jails and the juveniles lodged in the Remand Homes and for protection of their health and welfare.

26. In the said Suo Motu Writ Petition, by order dated 23.03.2020, after considering the response by the various States to the said show-cause notice, the Supreme Court has issued the following directions :

“We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a

lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.”

27. By order dated 13.04.2020, the Supreme Court in the said *Suo Motu Writ petition (Civil) No. 1 of 2020*, in continuation to the directions given in the order dated 23.03.2020, made the following observations:

“We make it clear that we have not directed the States/Union Territories to compulsorily release the prisoners from their respective prisons. The purpose of our aforesaid order was to ensure the States/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released.”

28. The HPC, Maharashtra, in its meeting dated 25.03.2020, in determining “the class” or “the category” of the prisoners, considered the factors (a) nature of offence, (b) severity of offence, (c) number

years to which the convict has been sentenced and (d) any other relevant factor. The HPC has taken decision about the convicted prisoners in sub-para (ii) and (iii) of para 8 of the minutes of meeting dated 25.03.2020 which read as under :

“(ii) The convicted prisoners whose maximum punishment is 7 years or less, shall, on their application be favourably considered for release on emergency parole, for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

(iii) The convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough), for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.”

29. The HPC, as per the minutes of meeting dated 11.05.2020 pursuant to the report dated 10.05.2020, has taken the decision vide para 5 as follows :

"5. The decision of this High Power Committee dated 25th March, 2020 shall now be applicable also to the category of prisoners mentioned hereinbelow. We accordingly issue the following directions:

(i) All undertrial prisoners booked/charged for such offences for which maximum sentence is above 7 years shall, be favourably considered for release on interim bail (except those falling the enumerated below) on personal bond of such amount as may be determined for a period of 45 days or till such time as the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The undertrial prisoners shall report to the concerned police station, within whose jurisdiction they are residing, every 30 days. The exception made shall apply to the following category of offences :

(1) Indian Penal Code

- a) IPC – Chapter VI-Offences against State – IPC 121 to 130
- b) IPC – 303
- c) IPC – 364(A), 366, 366(A), 366(B), 367 to 374

- d) *IPC – 376(a) to (e)*
- e) *IPC – 396*
- f) *IPC – 489(a) to (e)*
- g) *Bank Frauds and Major Financial Scams*

(2) **SPECIAL ACTS**

- a) *MOCO, TADA, POTA, UAPA, PMLA, Explosive Substances Act, Anti Hijacking Act*
- b) *NDPS (Other than personal consumption)*
- c) *MPID*
- d) *POCSO*
- e) *Foreigners in Prison.*

It is clarified that the rest of the clauses (iv) to (x) of the decision dated 25th March, 2020 of this Committee shall apply and shall form part of the present decision.”

30. By Corrigendum dated 18.05.25020 to minutes of meeting of HPC dated 11.05.2020, the HPC directed corrections and substituted the category of cases falling under IPC so also Bank Frauds and Major Financial Scams in relation to the exclusion of offences.

31. In the backdrop of all these orders passed by the Supreme Court in *Suo Motu Writ Petition (Civil) No. 1 of 2020* and the decisions taken by the HPC time to time as reproduced hereinabove, in sub-Rule (1) of Rule 19 of the said Rules, after clause (B), the following Clause (C) has been added:

“(C) On declaration of epidemic under the Epidemic Diseases Act, 1897, by State Government :

(i) For convicted Prisoners whose maximum punishment is 7 years or less, on their application shall be favorably considered for release on emergency parole by the Superintendent of Prison for a period of 45 days or till such time that the State Government withdraws the Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days.

(ii) For convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by Superintendent of Prison, if the convict has returned to prison on time on last 2 release (whether on parole or furlough), for the period of 45 days or till such time that the State Government withdraws the Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days:

Provided that the aforesaid directions shall not apply to convicted prisoners convicted for serious economic offences or bank scams or offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA etc. (which provide for additional restrictions on grant of bail in addition to those under the Code of Criminal Procedure, 1973 (2 of 1974) and also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra.”

32. In the case of **Pintu s/o Uttam Sonale** (supra) relied upon by learned counsel for the petitioners so also the learned APP, the Full Bench of this Court at its Principal Seat has considered the purpose of incorporating Rule 19(1) sub-rule (C) and observed that it is completely different from what is provided for in sub-rule (A) and sub-rule (B). Sub-rule (C) is incorporated in view of the declaration of the epidemic by the State Government under the Epidemic Diseases Act, 1897 and the purpose being to grant benefit of this rule to a limited category of prisoners so as to avoid ill-effects of pandemic and consequent health hazards. The Full Bench has also observed that the amended rule in no manner takes away the discretion of the authority effecting these provisions so as to confer any vested right in the prisoners who stand convicted of serious offences. In para 21 and 22 of the judgment, the Full Bench has made observations to that effect which are as follows:

" 21. We may also note that even in case of eligibility for furlough as provided in Rule 4, the category of prisoners in Rule 4(12) and (21) are held not eligible for furlough. Rule 4(12) and 4(21) read as under:-

"4. (12) Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak, riot, mutiny or escape, or who have been found to be instigating the serious violation of prison discipline, smuggling of narcotic and psychotropic substances including convicted under Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), rape or rape with murder, attempt to rape with murder and foreigner prisoners (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section); (21) Those involved in sexual offences against minor and human trafficking"

22. We are not inclined to accept the contentions as urged on behalf of the petitioner that merely because the POCSO Act is not found in the special Acts as referred in the proviso, the prisoners convicted under the POCSO Act can avail benefit of emergency parole. The next contention as urged on behalf of the petitioner is that the notification itself is contrary to Rule 19. We are afraid that this contention cannot be accepted. The purpose of incorporating Rule 19(1) sub-rule (C) is completely different from what is provided for in sub-rule (A) and sub-rule (B), which is a special provision, incorporated in view of the declaration of epidemic by the State Government under the Epidemic Diseases Act, 1897. The purpose being to grant benefit of this rule to a limited category of prisoners so as to avoid ill-effects of pandemic and

consequent health hazards, however, with clear exception that sub-rule C(ii) would not be applicable when the category of prisoners is of prisoners convicted for serious economic offences or bank scams or offences under the Special Acts. Thus there is no substance in the contention as urged on behalf of the petitioner that the notification is in any manner contrary to the basic provision of Rule 19(A), (B). The amended rule in no manner takes away the discretion of the authority effecting these provisions so as to confer any vested right in the prisoners who stand convicted of serious offences."

33. In the case of ***Asfaq v. State of Rajasthan & Ors.*** (supra), relied upon by learned counsel Mr. Rupesh Jaiswal appearing for the petitioners, in para 19, the Supreme Court has made the following observations:

"19) Another vital aspect that needs to be discussed is as to whether there can be any presumption that a person who is convicted of serious or heinous crime is to be, ipso facto, treated as a hardened criminal. Hardened criminal would be a person for whom it has become a habit or way of life and such a person would necessarily tend to commit crimes again and again. Obviously, if a person has committed a serious offence for which he is convicted, but at the same time it is also found that it is the only crime he has committed, he cannot be categorised as a hardened criminal. In his case consideration should be as to whether he is showing the signs to reform himself and become a good citizen or there are circumstances which

would indicate that he has a tendency to commit the crime again or that he would be a threat to the society. Mere nature of the offence committed by him should not be a factor to deny the parole outrightly. Wherever a person convicted has suffered incarceration for a long time, he can be granted temporary parole, irrespective of the nature of offence for which he was sentenced. We may hasten to put a rider here, viz. in those cases where a person has been convicted for committing a serious offence, the competent authority, while examining such cases, can be well advised to have stricter standards in mind while judging their cases on the parameters of good conduct, habitual offender or while judging whether he could be considered highly dangerous or prejudicial to the public peace and tranquility etc.”

34. In para 23 of the aforesaid judgment in **Asfaq** the Supreme Court has also referred the Rules of the year 1995 of the Central Government, in this behalf, as skeleton in nature.

35. In the case of **Kalyan s/o Bansidharrao Renge** (supra), relied upon by learned counsel for the petitioners, the said Notification dated 08.05.2020 pertaining to the release of the prisoners on emergency parole is considered to the limited extent without referring Rule 4 which is substantially amended in its application to the State of Maharashtra in the year 2018.

36. In the case of ***Ravindrasing @ Munna s/o Dilipsing Parihar*** (supra), the Division Bench of this Court also considered the said Notification dated 08.05.2020 to the extent of the clause of last two releases and surrender on time.

37. In the case of ***Mahesh Vsantrao Motaphale*** (supra) relied upon by learned counsel for the petitioners, the same issue, as in the earlier case of ***Ravindrasing***, is considered and decided.

38. In the case of ***Shubham s/o Devidas Gajbhare*** (supra), relied upon by learned counsel for the petitioners, the Division Bench of this Court has held that the convict under Section 366(A) and 376 of IPC is not entitled to get benefit of parole and furlough in terms of Rule 4(12) of the said Rules.

39. In ***Kantilal Nandlal Jaiswal*** (supra), the Full Bench of this Court at Nagpur has dealt with the issue in a different context and held that parole is not a mere administrative decision dictated by administrative policy of State, but it is limited legal right available to convict or prisoner subject to satisfaction of requirement specified in the Rules of 1959 for grant of parole, with the avowed objectives to be achieved as specified in Rule 1(A) of the said Rules.

40. It is to be mentioned here that Rule 4 in its application to the State of Maharashtra is substituted by recent Notification dated 16.04.2018. Rule 4 of the said Rules is reproduced herein below:

“4. Eligibility for furlough -

All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough:

- (1) Habitual prisoners;*
- (2) Prisoners convicted of offences under sections 392 to 402 (both inclusive) of the Indian Penal Code (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section);*
- (3) Prisoners convicted of offences under the Bombay Prohibition Act, 1949 (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section);*
- (4) Prisoners whose release is not recommended in Police Commissionerate area by the Assistant Commissioner of Police and elsewhere, by the Deputy Superintendent of Police on the grounds of public peace and tranquility;*
- (5) Prisoners who, in the opinion of the Superintendent of prison show tendency towards crime;*
- (6) Prisoners whose work and conduct are, in the opinion of the Superintendent of the Prison, not satisfactory enough;*
- (7) Prisoners confined in Ratnagiri Special Prison (other*

than prisoners transferred to that prison for Prison services);

(8) Prisoners convicted of offences of violence against person or property committed for political motives, unless the prior consent of the State Government to such release is obtained (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section);

(9) A Prisoner or class of prisoners in whose case the State Government has directed that the prisoners shall not be released or that the case should be referred to it for orders;

(10) Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough;

(11) Prisoners whose presence is considered dangerous or otherwise prejudicial to public peace and order by the District Magistrate and Superintendent of Police;

(12) Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak, riot, mutiny or escape, or who have been found to be instigating the serious violation of prison discipline, smuggling of narcotic and psychotropic substances including convicted under Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), rape or rape with murder, attempt to rape with murder and foreigner prisoners (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section);

(13) Who is sentenced for offences such as terrorist crimes, mutiny against state, kidnapping for ransom (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section);

- (14) *Who is sentenced with death;*
- (15) *Prisoners convicted for failure to give surety for maintaining peace or good behavior;*
- (16) *Prisoners suffering from mental illness, if not certified by the Medical Officer to have recovered;*
- (17) *Prisoners convicted of offences against any law relating to matters to which the executive power of the Union Government extends, unless approved by the Union Government;*
- (18) *Prisoners whose release on leave is likely to have repercussions elsewhere in the country;*
- (19) *Prisoners whose release on leave is likely to have repercussions during the period of code of conduct of Local bodies, Legislature and Parliament elections;*
- (20) *Who in the opinion of police/prison authorities are likely to jump furlough;*
- (21) *Those involved in sexual offences against minor and human trafficking."*

41. Rule 19 sub-rule (1) of the said Rules contemplates emergency parole and sub-rule (2) speaks about regular parole. So far as sub-rule (2) about regular parole is concerned, all the prisoners eligible for furlough shall be eligible for regular parole for the reasons as mentioned in sub-rule (2). In the backdrop of the directions given by the Supreme Court in *Suo Motu Writ Petition (Civil) No. 1 of 2020*

and so also considering the categorisation made by the HPC for release of the convicted prisoners and also in terms of the newly added sub-rule 19(1)(C), it cannot be said that the eligibility criteria as contemplated under Rule 4 would be inapplicable to Rule 19(1)(C).

42. So far as clause (ii) of Rule 19(1)(C) is concerned, the same has been added on declaration of epidemic under the Epidemic Diseases Act, 1897, by the State Government following the directions of the Supreme Court as mentioned in the foregoing paragraphs in detail in Suo Motu Writ Petition (Civil) No. 1 of 2020 and also by the HPC. We are thus of the considered opinion that the provisions of Rule 4 as reproduced hereinabove are equally applicable to clause (ii) of the newly added Rule 19(1)(C).

43. So far as the petitions falling under category I are concerned, the issue involved in those petitions is about late surrender of the convicted prisoners on earlier release on parole or furlough. In the added sub-rule (C) of Rule 19(1), a condition is laid down that the prisoner whose maximum sentence is above 7 years shall be appropriately considered for release on emergency parole if the convict has returned to prison on time on last 2 releases (whether on parole or furlough).

44. However, Rule 23A of the Maharashtra Prisons (Remission System) Rules, 1962 is brought to our notice which deals with regulation for prisoners coming late from parole and furlough. The proportion of cut in remission for the prisoners coming late from parole and furlough is prescribed and shown in the chart. The said chart which is the integral part of Rule 23A is reproduced below to the extent of the prisoners coming late from parole:

23A. Regulations for prisoners coming late from parole and furlough.

The Prisoner coming late from parole and furlough the proportion of cutting in remission shall be as follows:-

For the prisoners coming late from Parole

Sr. No.	Category	Proportion of cut in remission
(1)	(2)	(3)
1.	<i>If the prisoner surrenders himself to the prison authorities on the next day after expiry of the period of sanctioned parole</i>	<i>Strict warning</i>
2.	<i>Late for first time by 2 to 15 days after expiry of the period of sanctioned parole</i>	
	<i>(A) Surrender himself to jail</i>	<i>1:1 day</i>
	<i>(B) Brought by police authorities to jail</i>	<i>1:2 days</i>
3.	<i>Late for the first time by more than 15 days and upto one month after expiry of the period of sanctioned parole</i>	
	<i>(A) Surrender himself to jail</i>	<i>1:3 days</i>

	<i>(B) Brought by police authorities to jail</i>	<i>1:4 days</i>
4.	<i>Late by more than one month and upto two months after expiry of the period of sanctioned parole</i>	
	<i>(A) Surrender himself to jail</i>	<i>1:4 days</i>
	<i>(B) Brought by police authorities to jail</i>	<i>1:5 days</i>
5.	<i>Late by more than two months and upto three months after expiry of the period of sanctioned parole either surrendered himself or brought by police authorities</i>	<i>1:5 days</i>
6.	<i>Late while on second parole for the period mentioned in clauses (1) to (5) above</i>	<i>1:5 days. However, if the reason for being late is jursitifiable then cut in remission in proportionate with the clauses (1) to (5) above.</i>
7.	<i>Unauthorised stay outside the jail for the period more than three months and upto six months or brought by police.</i>	<i>Remission will not be given for three years.</i>
8.	<i>If prisoner stays outside the jail unauthorisedly for the period of six months or more</i>	<i>Prisoner remission shall be cut permanently.</i>
9.	<i>If prisoner produce forged documents or gives false reason for getting the parole or got sanctioned the parole by producing forged documents.</i>	<i>The order sanctioning parole shall be cancelled immediately and such period shall be treated as unauthrised and for this period remission will be cut in proportionate with the clauses (1) to (5) above.</i>

45. In the instant bunch of petitions, so far as category I is concerned, we have seven petitions preferred against the rejection of emergency parole for coming late while released on parole on earlier occasion. In terms of the above chart, so far as the category at serial

number (1) is concerned, as per the category (1) if the prisoner surrenders himself to the prison authorities on the next day after expiry of the period of sanctioned parole, strict warning is contemplated. In terms of category (2), if the prisoner is late for first time by 2 to 15 days after expiry of the period of sanctioned parole and (A) surrenders himself to jail, then, 1:1 day and (B) brought by police authorities to jail, then, 1:2 days is the prescribed proportion of cut in remission. Even in terms of Rule 24(2) of the Maharashtra Prisons (Remission System) Rules, 1962, the Superintendent may, with the previous sanction of the Regional Deputy Inspector General, readmit to the remission system any prisoner, who has been permanently removed therefrom under rule 23 if his conduct in prison justifies this subsequently. In categories (1) and (2) of Rule 23A of the Maharashtra Prisons (Remission System) Rules, 1962, as discussed above, the proportion of cut in remission is not contemplated or contemplated to the minimum extent. Even in the newly added Rule 19(1)(C) and even in Rule 4 of the said Rules, the exact period of late return is not mentioned. However, in the light of category (1) of Rule 23A of the Maharashtra Prisons (Remission System) Rules, 1962, which contemplates strict warning if the prisoner surrenders himself to the prison authorities on the next day after expiry of the period of sanctioned parole, we are inclined to consider the petition at sr. no. 3 of category I i.e. Criminal Writ Petition No. 647 of 2021

filed by Nazira Anwarkhan Pathan (C-8010) who has returned late by one day and that is the sole reason for rejection of emergency parole to her. All the other petitioners in category I are not entitled for parole in terms of the newly added provisions of Rule 19(1)(C) and Rule 4(10) of the said Rules.

46. In category II of the petitions, the eligibility for parole in terms of the provisions of Rule 4 of the said Rules is considered while rejecting emergency parole. In all the petitions in category II, the reason for rejection of emergency parole is in view of the bar of Rule 4(12) of the said Rules. Rule 4(12) is reproduced herein below:

“4. Eligibility for furlough -

All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough :-

(1) to (11)

(12) Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak, riot, mutiny or escape, or who have been found to be instigating the serious violation of prison discipline, smuggling of narcotic and psychotropic substances including convicted under Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), rape or rape with murder, attempt to rape with murder and foreigner prisoners (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section);”

47. In view of the discussion in the foregoing paragraphs, we are of the considered opinion that the petitioners in category II are not entitled to be released on parole as they have been convicted under Section 376(2)(g) or 376(d) or 376(2)(i) or 376(2)(n) of IPC and the petitioner in Criminal Writ Petition No. 719 of 2021 (at serial no.2 of category II) is also convicted under Section 3(2) of the MCOC Act.

48. So far as category III is concerned, there is no dispute about the legal position that the prisoner may be considered for first release on parole after completion of three years of imprisonment counted from the date of admission. Thus, no case is made out to interfere in the order impugned in Criminal Writ Petition No. 601 of 2021. Hence we proceed to pass the following order:

ORDER

I. The petition at sr. no. 3 of category I i.e. Criminal Writ Petition No. 647 of 2021 filed by Nazira Anwarkhan Pathan (C-8010) is hereby allowed in terms of prayer clause "A".

II. Rest of the Criminal Writ Petitions from category I are hereby dismissed.

III. However, in petition at serial no.4 of Category I, i.e. Criminal Writ Petition No. 679 of 2021 [Arjun Kacharu Unavane (C-5117) v. The State of Maharashtra and Another], if furlough application of the convict is pending without any order passed thereon, the same shall be decided at the earliest.

IV. All the Criminal Writ Petitions from category II and category III are hereby dismissed.

V. All the Criminal Writ Petitions are accordingly disposed off.

(S. G. DIGE, J.)

(V. K. JADHAV, J.)

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