

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

CRIMINAL WRIT PETITION NO. 681 OF 2021

Jameer S/o Dilawar Shaikh,
Age 25 years, Occu: Private Service,
R/o Sikandarpur, Taluka and District Latur. ...Petitioner

versus

1. The State of Maharashtra
2. The Superintendent of
Central prison, Harsul, Aurangabad.
3. The Divisional Commissioner,
Aurangabad Division, Aurangabad.
4. The Deputy Inspector of Police,
Prison and Reformation Central Division,
Aurangabad. ...Respondents

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Mr. M. L. Dharashive, Advocate for the Petitioner.
Mr. S. J. Salgare, A.P.P. for Respondents.

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**CORAM : V. K. JADHAV AND
S. G. DIGE, JJ.
DATED : 05.07.2021**

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

1. By consent of the parties, heard finally at admission stage.
2. This petition is filed against rejection of Covid-19 emergency parole. Emergency parole is refused to the petitioner on the ground that he is convicted for the offence punishable under Sections 397

and 394 of IPC and also that earlier he has not been released on furlough/parole leave during the period of his sentence.

3. 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.

4. 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.”

5. 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.”

6. In terms of the order dated 23.03.2020 passed by the Supreme Court in *Suo Motu Writ Petition (Civil) No. 1 of 2020*, the High Power Committee (HPC) has been constituted on 24.03.2020 in the State of Maharashtra. The HPC, 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."

7. 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.”

8. By Corrigendum dated 18.05.2020 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.

9. 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 Maharashtra Prisons (Mumbai Furlough and Parole) Rules 1959 (for short, "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.”

10. In the case of ***Pintu s/o Uttam Sonale vs. The State of Maharashtra***, reported in 2021 ALL MR (Cri.) 822, 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.”

11. In ***Kantilal Nandlal Jaiswal vs. Divisional Commissioner, Nagpur and Anr.*** reported in 2019 ALL MR (Cri.) 4003 (F.B.), 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.

12. 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. Sub-rule (2) of 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) ...

(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);

13. 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 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). We are thus of the considered opinion that the provisions of Rule 4 are equally applicable to the newly added Rule 19(1)(C).

14. In the instant petition, the petitioner is convicted for the offence punishable under Sections 397, 394 and 323 of IPC. In terms of the provisions of Rule 4(2) of the said Rules, if there is conviction for the offence punishable under Section 392 to 402 of IPC, then the prisoner needs to undergo that sentence and only after that he becomes eligible to get furlough. As discussed above, the same Rules will be applicable for emergency parole.

15. Thus, no case is made out to interfere in the order impugned in Criminal Writ Petition No. 681 of 2021. Hence we proceed to pass the following order:

ORDER

Criminal Writ Petition No. 681 of 2021 is hereby dismissed.

(S. G. DIGE, J.)

(V. K. JADHAV, J.)

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