

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 701 OF 2021

Chandrakant S/o Narayan Kamble, C-9029

Age: 53 years, Occupation Nil.,

R/o: At present Paithan Open Prison,

District Aurangabad

.. Petitioner

Versus

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

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

.. Respondents

...

Mrs. Sharada P Chate, Advocate for petitioner

Mr. S. J. Salgare, APP for respondents - State

...

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

DATE : 14th JULY, 2021

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

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

2. By this writ petition, the petitioner is challenging the order dated 2nd March 2021, passed by respondent No. 2 – the Superintendent, Open Prison at Paithan, District Aurangabad, by which the emergency parole is refused to the petitioner.

3. The petitioner had filed an application for emergency parole under Government Notification, dated 8th May 2020. The said application came to be rejected by respondent No. 2 on the ground that the petitioner is not entitled to release on emergency parole, wherein, he had not availed leave on two occasions, he had not availed single leave, and further the reason for not granting parole application is that shortage of prisoners as the most of them are on leave.

4. Learned counsel for the petitioner submits that the order passed by respondent No. 2 is unreasonable, absurd and also against Article 14 (right to equality) and Article 21 (right to life liberty) of the Constitution of India. The petitioner is eligible for emergency parole leave as per Government Notification, dated 8th May 2020. But, without considering this fact, respondent No.2 rejected the same, hence, it is necessary to quash and set aside the impugned order.

5. Learned APP appearing for the respondents-authorities submits that the order passed by the respondent-authority is reasonable and as per Government Notification, dated 8th May 2020.

6. The petitioner has been convicted for the offences punishable under Sections 304 Part-II and 506 of the Indian Penal Code (for short, "IPC") vide Judgment and order passed by the learned Additional Sessions Judge, Ahemadpur, District Latur, dated 17th June

2016 and sentenced him to suffer imprisonment for ten years under Section 304 Part-II of IPC and two years for the offense punishable under Section 506 of IPC. He has undergone more than six years sentence at Paithan Open Prison, Paithan, District Aurangabad.

7. The Division Bench of this Court in the case of ***Kavita w/o Dilip Baviskar Versus State of Maharashtra, in Criminal Writ Petition No. 571 of 2020, decided on 30-06-2020*** has interpreted the condition given in the aforesaid notification. This Court has held that the prisoner had not availed furlough or parole in the past cannot come in his way if he was otherwise eligible during that period to get furlough or parole. In view of this interpretation, this Court holds that the order passed by respondent No. 2 cannot sustain in law. In the result, following order is passed.

ORDER

- (i) The Criminal Writ Petition is allowed.
- (ii) The order dated 2nd 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 8th 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