

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 814 OF 2021

Avinash S/o Gunwant Dhoke C-5278
Age : 40, Occ. Nil, R/o At present
Paithan open Prison Tq. Dist. Aurangabad ...Petitioner

Versus

1. The State of Maharashtra,
Through its Home Department,
Mantralaya, Mumbai 32.
2. The Superintendent of the
Open Prison at Paithan,
Dist. Aurangabad ...Respondents

Ms Sharda P. Chate, Advocate for Petitioner
Mr R.V. Dasalkar, A.P.P. for Respondents-State

- AND -

CRIMINAL WRIT PETITION NO. 813 OF 2021

Raju s/o Hiralal Mishra C-5340,
Age : 40, Occ. Nil, R/o At present
Paithan open Prison Tq. Dist. Aurangabad ...Petitioner

Versus

1. The State of Maharashtra,
Through its Home Department,
Mantralaya, Mumbai 32.
2. The Superintendent of the
Open Prison at Paithan,
Dist. Aurangabad ...Respondents

Ms Sharda P. Chate, Advocate for Petitioner
Mr R.V. Dasalkar, A.P.P. for Respondents-State

**CORAM : V.K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 03.08.2021

ORAL JUDGMENT : (PER SHRIKANT D. KULKARNI, J.)

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for both the sides, heard finally at admission stage.
2. The petitioners are convicts and undergoing sentence in open Prison at Paithan. They have applied for emergency parole in view of the notification dated 8th May, 2020 issued by the State Government, who are eligible for furlough or parole leave subject to certain conditions. The jail authority was pleased to reject the applications for emergency parole moved by the petitioners on the ground that petitioners have not availed benefit of furlough or parole leave even once and secondly, the capacity of Open District Prison, Paithan is 500 inmates and only 77 inmates are now lodged therein. Having regard to the less number of inmates in the open prison, the jail authority feels that there is no need to release them on emergency parole.
3. Feeling aggrieved by the impugned orders passed by the jail authority dated 04.02.2021 and 21.6.2021, the petitioners have challenged the said order by taking aid of Article 226 of the Constitution of India.

4. Heard Ms Sharda Chate, learned counsel for the petitioners and learned A.P.P. Mr R.V. Dasalkar for the respondents.

5. Perused the copy of notification dated 08.05.2020 and the orders dated 4.2.2021 and 21.6.2021 passed by the jail authority. We have also perused the copy of order passed by the Division Bench of this Court in Criminal Writ Petition No. 284/2021 with connected writ petitions dated 9th March, 2021.

6. The State of Maharashtra has issued notification dated 08.05.2020 in the background of COVID-19 pandemic with a view to release the prisoners on emergency parole looking to their safety.

7. The Division Bench of this Court in case of **Kavita W/o of Dilip Baviksar Vs. State of Maharashtra in writ petition No 571/2020 vide judgment and order dated 30.06.2020** to which one of us (Shrikant D. Kulkarni, J.) was a party has interpreted the conditions laid down in the Government Notification dated 08.05.2020, issued by the State Government and held that the said conditions are imposed in order to ensure timely return of the prisoners after emergency parole period is over. The para Nos. 4 and 5 read thus :

“4. In the notification dated 8th 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 prole 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 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. The same view is taken by the Division Bench of this Court consistently and even recently in Criminal Writ Petition No. 284 of 2021 with connected matters dated 9th March 2021 to which one of us (V.K. Jadhav, J) was a party.

9. We agree with the view expressed earlier by the Division Bench of this Court that said condition is imposed only with a view to ensure timely return of the prisoner who is released on emergency parole leave on account of COVID-19 Pandemic.

10. Learned A.P.P. Mr Dasalkar has placed on record the data received from Open District Prison, Paithan and submits that the capacity

of the Open Prison is 500. As on 1.5.2020, the capacity was 475 prisoners. as on 1.8.2021. Only 39 inmates are there in Open Prison at Paithan.

11. We are not impressed by the argument advanced by the learned A.P.P.

12. It would not be proper to turn down the prayer for emergency parole only because less number of inmates are in Open Prison at Paithan. The reasons assigned by the jail authority for rejection of emergency parole are not sound and do not stand on legal platform.

13. In view of the above, we are inclined to allow both Writ Petitions.

ORDER

(I) Criminal Writ Petitions are hereby allowed.

(II) The impugned orders passed by the jail authority dated 4.2.2021 and 21.6.2021 rejecting emergency parole to the petitioners are hereby quashed and set aside.

(III) Applications filed by the petitioners for emergency parole under Government Notification 8.5.2020 are hereby allowed.

(IV) The petitioners be released on emergency parole on usual terms and conditions within seven days from today.

(V) Rule made absolute in above terms.

[SHRIKANT D. KULKARNI, J.]

[V. K. JADHAV, J.]