

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

CRIMINAL WRIT PETITION NO. 1050 OF 2021

Gangaram Bhawka Kedar (Convict No. C/5028) **...Petitioner**

Versus

The State of Maharashtra & Ors. **...Respondents**

.....
Smt. Sharda P. Chate, Advocate for the petitioner
Shri. R. D. Sanap, APP for respondent / State
.....

**CORAM : V. K. JADHAV &
SANDIPKUMAR C. MORE, JJ.**

DATE : DECEMBER 14, 2021

ORAL ORDER : -

1. Heard finally with consent, at the admission stage.
2. The petitioner is convicted for an offence punishable under Section 302 of the Indian Penal Code, vide Judgment and Order dated 31st February, 2010 passed by learned Additional Sessions Judge, Ahmednagar.
3. In view of the notification dated 08.05.2020 issued by the State Government and on declaration of Epidemic Diseases Act, 1897 in view of Covid-19 pandemic, the petitioner had applied for

emergency parole leave for 45 days which was granted by respondent no. 3 on 01.08.2020 and the petitioner was released on the very day. On expiry of said period of 45 days leave, the petitioner had surrendered back to Open District Prison, Paithan on 16.09.2020. The petitioner had submitted an application on 25.03.2021 for emergency parole leave afresh, before the Superintendent, Open District Prison, Paithan. Respondent No. 3 had rejected the said application of the petitioner by order dated 30.03.2021.

4. The learned Counsel for the petitioner submits that the petitioner's application is rejected mainly on the ground that there are at present less number of prisoners in the Jail and as such, there is no question of any violation of the norm of maintaining the social distancing. It is also stated in the impugned order that since the prisoner/petitioner has surrendered on his own on 16.09.2020, there is no reason to consider his emergency parole leave application afresh. The learned Counsel submits that the Full Bench of this Court (Coram: Sunil P. Deshmukh, Mangesh S. Patil & R. G. Avachat, JJJ.) vide Judgment dated 22.12.2020 delivered in the case of ***Nagnath Sakharam Mane Vs. The State of Maharashtra and Another*** [Criminal Application No. 4118 of 2019 in Criminal Appeal No. 243 of 2019], has come to a conclusion that emergency parole need not mean that

the prisoners should make an application and that the Jail Superintendent can *suo motu* grant emergency parole without asking for applications. The learned Counsel submits that the petitioner has not immediately applied for extension of his emergency parole but applied for fresh emergency parole after the expiry of six months' period. This Court (**Coram : Ravindra V. Ghuge & B.U. Debadwar, JJ.**) by order dated 1st April, 2021 passed in **Criminal Writ Petition No. 438 of 2021** (*Nagesh s/o Shankar Mathpati Vs. The State of Maharashtra & Another*) and other connected matters, observed in paragraph no. 12 thereof, that since the coordinate Bench of this Court has taken a view that there should not be discrimination amongst the applicants, considered the same by not laying down any precedent. Learned Counsel submits that even the Hon'ble Supreme Court vide order dated 07.05.2021 passed in ***Suo Motu Writ Petition (C) No. 1/2020***, also directed that those inmates which were granted parole, pursuant to our earlier orders, should be again granted a parole for a period of 90 days in order to tide over the pandemic. Even in paragraph no. 11 of the said order dated 07.05.2021, the Hon'ble Apex Court has found merit in the submission of the learned Senior Counsel appearing on behalf of the applicant that the High Powered Committee, in addition to considering the fresh release, should forthwith release all the inmates who had been released

earlier pursuant to our order dated 23.03.2020 by imposing appropriate conditions. Such an exercise is mandated in order to save valuable time.

5. Learned APP submits that the application seeking emergency parole filed by the petitioner came to be rejected mainly on the ground that on 16.09.2020 the petitioner himself had surrendered to the Open District Prison, Paithan and as such, he is not entitled for further extension. At the time of passing of the order, there were only 45 inmates as against the total capacity of 500 and as such, it is not necessary to release the petitioner on Covid-19 emergency parole. Learned APP submits that there is no substance in this petition and the same is liable to be dismissed. Learned APP has also pointed out that this Court, vide order dated 26th July, 2021 passed in Writ Petition No. 471 of 2021, in identical facts, refused to consider the petition.

6. We have carefully gone through the impugned order dated 30.03.2021. It appears that the petitioner was released on emergency Covid-19 parole on 01.08.2020 and on expiry of emergency parole leave, the petitioner himself had surrendered back to the Open District Prison on 16.09.2020. It is observed by the Full

Bench of this Court in the case of Nagnath Mane (supra), that it is not necessary that the prisoner should make an application for extension of his emergency parole. In terms of the directions given by the Hon'ble Supreme Court in the *Suo Motu* Writ Petition No. 1/2020 (supra) and in accordance with the guidelines issued by the High Power Committee from time to time, the prisoner once released on Covid-19 emergency parole, is entitled for extension. Furthermore, the Hon'ble Supreme Court as well as High Power Committee did not observe that in case there are less number of prisoners in the Jail the directions given by the Supreme Court and the guidelines framed by the High Power Committee, are inapplicable.

7. So far as the order passed by this Court on 26.07.2021 in Criminal Writ Petition No. 471 of 2021 (supra) is concerned, the petitioner therein had himself surrendered to the Jail with the application in writing that he had lot of inconvenience to stay outside. He had approached this Court with the submissions that his signature was obtained on the blank paper and he had never surrendered before the authority and the authority refused to grant any further extension. However, the facts of the said case and the case in hand are altogether different.

8. In view of the above and in terms of the directions given by the Hon'ble Supreme Court and even as per the guidelines framed by the High Power Committee, the petitioner is entitled for the emergency Covid-19 parole either afresh or the extension in terms of the earlier order passed by the authority. We, accordingly, remit the matter back to the respondent-authority to pass the appropriate orders.

9. It is needless to say that the impugned order dated 30.03.2021 is hereby quashed and set aside.

10. Criminal Writ Petition is accordingly disposed of.

[SANDIPKUMAR C. MORE]
JUDGE

[V. K. JADHAV]
JUDGE