

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2666 OF 2021

Nisha w/o Lalmani Giri,]
(Petitioner son Narendra s/o Lalmani Giri,]
Convict No.6455, Confined at Central Jail, Kalamba]
Age : 53 years, Occu : Housewife]
R/o : House No.235, Mahapegaon,]
Near Millennium Business Park, Navi Mumbai, Thane]..... Petitioner.

Versus

State of Maharashtra]
Through Superintendent]
Central Prison, Kalamba, Kolhapur,]..... Respondent.

Mr. Rupesh A Jaiswal for the Petitioner.
Mrs. S D Shinde, APP for the Respondent/State.

CORAM : S. S. SHINDE,
N. J. JAMADAR, JJ

Reserved on : 24th August 2021
Pronounced on : 30th August 2021

JUDGMENT (PER S S SHINDE, J.)

1 Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

2 This Writ Petition is filed for the following substantial relief :-

(B) By Writ of Mandamus or any other appropriate writ, order or directions in the like nature to quash and set aside the order of Respondent dated 25.06.2021 (Exhibit-B) and

further direct the respondent to release the Petitioner's son (Narendra S/o Lalmani Giri, convict no.6455, confined at Kalamba, Kolhapur Central Jail) on Emergency Parole Leave."

3 Convict Narendra Lalmani Giri is the son of the Petitioner. The Petitioner's son has been convicted by the Sessions Judge, Greater Mumbai in Special MOCOCA Case No.7 of 2008 for the offences punishable under Sections 302 and 452 of the Indian Penal Code and awarded sentence of life imprisonment. It is the case of the Petitioner that the convict was arrested on 26/04/2008 and he has undergone sentence of 13 years and three months approximately.

4 Earlier the convict had filed Criminal Writ Petition No.2090 of 2021 against the order of the Respondent/Authority rejecting his application for emergency parole. By order dated 24/06/2021, this Court has disposed of the said Writ petition No.2090 of 2021 with liberty to the convict to apply afresh to the concerned authority and, the concerned authority was directed to decide the application of the convict within one week from filing of such application.

5 Pursuant to the liberty granted by order dated 24/06/2021, the son of the Petitioner i.e. the convict has again applied for emergency parole leave, however, the said application has been rejected by the

Respondent/Authority by the impugned order dated 25/06/2021. Hence this Writ Petition.

6 The learned counsel appearing for the Petitioner submits that against his conviction, the convict has preferred an Appeal before this Court being Appeal No.1095 of 2021, and this Court by order dated 09/12/2019 has set aside the conviction of the convict under the provisions of the MCOCA Act. It is also submitted that the Respondent/Authority rejected the 2nd application of the Petitioner's son on the same grounds assigned in the earlier order of rejection, and therefore, there was non-application of mind on the part of the Respondent/Authority. It is also submitted that when the convict was released on furlough leave on 11/12/2020, he surrendered in time before the Respondent/Authority. It is submitted that the convict is behind the bar for a period of 13 years and 3 months. He also submitted that the central jail, Kalamba, Kolhapur is over crowded and there is no social distancing and, considering the pandemic situation, there is more danger to the life of convict. He also submitted that the Petitioner's son is not convicted under the provisions of MCOC, PMLA, MPID, NDPS, UAPA etc, therefore, the condition to release convict on parole as classified by the High Power Committee also stands satisfied by the convict. He, therefore, prays that the impugned order may be set aside and the Petitioner's son may be released on emergency parole.

7 The learned APP appearing for the Respondent/State, on the other hand, supported the impugned order of rejection of the application passed by the Respondent/Authority.

8 We have given our due consideration to the submissions made by the learned counsel for the Petitioner and the learned APP for the Respondent/State. With their able assistance we have carefully perused the pleadings and the grounds taken in the Writ Petition and the annexures thereto as also the reasons assigned in the impugned order.

9 As stated herein above, by the impugned order dated 25/06/2021 the Respondent/Authority has rejected the 2nd application of the convict for releasing him on emergency parole leave on the ground that the Petitioner's son is involved in serious offences and, if he is released on emergency parole, he may get absconded.

 The earlier application of the Petitioner's son for emergency parole leave has been rejected by the Respondent/Authority on the ground that he is released only once on furlough leave and therefore he is not entitled for emergency parole leave.

10 The learned counsel appearing for the Petitioner invites our

attention to the Government Notification dated 08th May 2020 and submits that the Petitioner's son is eligible to avail of the benefit of the said notification for releasing him on emergency covid-19 parole.

11 The learned APP has tendered across the bar the tabular chart showing the details regarding the parole/furlough leave granted to the convict and the period undergone in jail by the convict. It is mentioned in the said chart that the Petitioner's son is behind the bar for approximately period of 13 years and 3 months. It is also mentioned that earlier when he was granted furlough leave, he surrendered within the stipulated time to the prison authority.

12 We have carefully perused the chart produced by the learned APP and noticed that the Petitioner's son is behind the bar for more than 13 years and when he was released on furlough, he reported back to the prison within the stipulated time. It is required to be noted that there is nothing on record to indicate that the conduct of the convict in prison is not satisfactory. It is also not in dispute that the Petitioner's son was acquitted of the offence under the provisions of MCOCA Act. For the reasons recorded in the foregoing paragraphs and keeping in view pandemic situation, we are of the considered view that the Petitioner's son i.e. the convict Narendra Lalmani Giri deserves to be released on Covide-19 Emergency Parole. Hence the following order.

ORDER

1 The Writ Petition is allowed in terms of prayer clause (B).

2 The Petitioner's son viz Narendra s/o Lalmani Giri, convict
No.6455, confined at Central Jail, Kalamba, Kolhapur, shall be released on
Covid-19 Emergency Parole subject to fulfillment of usual terms and conditions

3 Subject to obtaining appropriate undertaking and on such terms
and conditions as the Respondent deem fit and proper, the Respondent shall
release the convict Narendra s/o Lalmani Giri to avail of the parole leave
within a period of two weeks from today.

4 Rule made absolute in above terms.

5 The Writ Petition is accordingly disposed of.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]