

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3008 OF 2021

Rajkumari w/o Sherbahadur Giri
(Petitioner Son Anil S/o Sherbahadur Giri
Convict No. 5586 confined at Central Jail
Kalamba, Kolhapur)
Age- 59 Years, Occ- Housewife,
R/o: Room No. 11, Near Hanuman Mandir,
Taksshila Society, Malad East, Mumbai.

...**PETITIONER**

Versus

The State of Maharashtra
Through Superintendent
Central Prison, Kalamba, Kolhapur.

...**RESPONDENT**

...

Mr. Rupesh Jaiswal for Petitioner.
Mr. K.V. Saste, APP for State.

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

**RESERVED ON : 13th SEPTEMBER, 2021.
PRONOUNCED ON: 17th SEPTEMBER, 2021.**

JUDGMENT: [PER S. S. SHINDE, J.]

1. This petition is filed by the mother of the convict taking an exception to the order dated 01.07.2021 passed by respondent, thereby rejecting the application of the convict for Covid-19 emergency parole.

2. It is the case of the petitioner that the convict was earlier released on furlough/parole and there was no breach of the

conditions imposed upon him.

3. It is the case of the petitioner that, yhe convict was arrested on 21.04.2008. He was tried for the offences punishable under Section 302, 452 of IPC and was sentenced to suffer life imprisonment by judgment and order dated 31.08.2012. It is the case of the petitioner that though the convict was charged for the offence punishable under Maharashtra Control Of Organised Crime Act, 1999 (hereinafter referred to as "MCOCA"), however, by judgment and order dated 09.12.2019 in Criminal Appeal No. 1015/2012, the convict acquitted from the offence punishable under MCOCA. It is submitted that the application filed by the convict has been rejected on the ground that in case the convict is released there may be possibility of breach of peace in the society.

4. It is submitted that in the wake of crisis arising out of spread of Covid-19 virus having regard to Article 21 of the Constitution of India, the Hon'ble Supreme Court had issued various directions in relation to the overcrowding of prisons and remand homes on 23.03.2020. In pursuance to the directions of Hon'ble Supreme Court a High Power Committee was constituted on 25.03.2020 by Government of Maharashtra, and in pursuance to

minutes of meeting of the said committee, Government Notification dated 08.05.2020 was passed, whereby amendment to the Bombay Furlough and Parole Amendment Rules, 2020 has been made by the Government Notification dated 08.05.2020. It is further submitted that the convict was released on parole on 12.09.2014 and he surrendered late by around 300 days for the reason that his father was suffering from stage four lung cancer, and except his son (convict) there was nobody to look after him and his hospitalization, and during that time the father of the convict had died and thus he surrendered late for that reason only. But, during the said period the convict has not committed any offence. The name of the convict is removed from the remission register for his illegal overstay outside the prison and from more than six years the convict was not released on furlough/parole, which was not considered by the respondent while passing the impugned order.

5. It is further submitted that for late surrender by the convict, the convict is already punished for the same as his name is removed from the remission register permanently. It is submitted that this court in number of cases has considered that when there is incident of late surrender, even then the convict needs to be released on emergency Covid-19 parole. In support of aforesaid

submission learned counsel for the petitioner placed reliance upon judgments in the cases of Sobha Tayade Vs. State of Maharashtra¹, Navnath Bhosale Vs. State of Maharashtra² and Aquino Vs. State of Maharashtra³. It is submitted by the learned counsel for the petitioner that presently there are 49 covid positive inmates in Kalamba Jail and earlier also more than 100 inmates were affected by the Covid-19 virus. The maximum capacity of said prison to accommodate the inmates is 30 inmates, but due to over crowding only 70-80 inmates are kept, and therefore, there is no question of social distancing. The convict had also suffered from Covid-19 virus during the period from 30.08.2020 till 12.09.2020.

6. It is submitted that the petitioner being mother of the convict would be able to control his activities in case the convict is released on Covid-19 emergency parole. It is further submitted that the convict is not having concerned with 'Gawli Gang' as alleged by the respondent. It is submitted that the convict is behind the bars from last 9 years and 3 months and including remission, has undergone 10 years and 1 month imprisonment. Therefore, learned counsel for the petitioner prays that the convict may be released on

1 Cri. WP-ASDB-LDVC No. 87/2020

2 Criminal Writ Petition No. 758/2020

3 Criminal Writ Petition No. 759/2020.

Covid-19 emergency parole.

7. During the course of hearing, learned counsel appearing for the petitioner has tendered across the bar affidavit of one Mr. Amreesh Yadav, who is friend of convict-Anil Giri. The same is taken on record. Mr. Amreesh Yadav stated in the said affidavit that in case the convict is released on Covid-19 emergency parole, he is ready to stand as surety.

8. Pursuant to the notices issued to the respondent, learned APP caused appearance and submitted a report of Superintendent, Kolhapur Central Prison, Kalamba. Relying upon the said report learned APP submitted that proper care is being taken in the prison so as to prevent the spread of Covid-19 virus. Everyday premises of said jail are being sanitized. There is separate room to treat the covid-19 affected inmates and Necessary treatment is provided to them. It is stated that in the said jail no inmate died due to Covid-19 virus and in case the convict is released on Covid-19 emergency parole, he may abscond and will not undergo the remaining part of sentence.

9. Learned APP submitted that the convict is associated with 'Gawli Gang' and it may not be safe to release the convict. Learned APP pressed into service Sub Rule 11 Rule 4 of the Prisons (Bombay Furlough and Parole) Rules, 1959. It is submitted that when the convict was earlier released on furlough/parole, he did not report back to the jail authority and illegally overstayed for more than 300 days, and therefore, it may not be proper to release the convict on Covid-19 emergency parole.

10. We have given careful consideration to the submissions of learned counsel for the petitioner and learned APP for State. With their able assistance we have perused pleadings and grounds taken in the petition, annexures thereto and the report submitted by Superintendent of Kolhapur Central Prison, Kalamba. It appears that till the date of submitting report by the Superintendent of Kolhapur Central Prison, Kalamba, the convict has undergone 7 years 10 months and 3 days imprisonment. The record shows that the convict was released earlier on 12.09.2014 and he was supposed to report back to the jail authority on completion of said period, but he surrendered late and illegally overstayed for 389 days outside the jail. He did not surrender on his own and police apprehended him and he was arrested on 20.10.2015 and was brought back to the jail

His name has been removed from the remission register as it is apparent from the report submitted by the respondent. In the said report it is also mentioned that the convict is a member of 'Gawli Gang' and his release may cause danger to the society.

11. The Respondent by placing reliance on Rule 4 Sub Rule 11 of the Prisons (Bombay Furlough and Parole) Rules, 1959, rejected the application of the convict for Covid-19 emergency parole. Rule 4 Sub Rule 11 reads as under:-

****[4. Eligibility for furlough-***

All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough-

(1) XXXX

(2) XXXX

(3) XXXX

(11) Prisoners whose presence is considered dangerous or otherwise prejudicial to public peace and order by the District magistrate and Superintendent of Police;

12. In the peculiar facts and circumstances of this case and keeping in view the past record of the convict it may not be desirable to release the convict on Covid-19 emergency parole. As it is evident from the report submitted by the respondent-authority that proper care is being taken in the prison to prevent the spread of Covid-19

virus. Therefore, we are of the considered view that in case the convict is released on Covid-19 emergency parole there is every likelihood of him absconding and he may not be available to undergo his remaining sentence. His release may cause danger to the safety of the society as it is evident from the report submitted by respondent-authority.

13. For the reasons aforesaid, we are not inclined to entertain the petition. Hence, the writ petition stands rejected.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)