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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.187 OF 2021

Ramesh Ramkaran Maurya	]	
R/o 13, A E Ekta Society,	]	
Sangharsha Nagar, Chandiwali	]	
Saki Naka, Andheri (East),	]	
Mumbai – 400072	]	
(Presently lodged in Yerwada Open	]	
District Prison)	]	.. Petitioner

VERSUS

1. The State of Maharashtra	]	
	]	
2. The Superintendent of Jail	]	
Yerwada Open Prison	]	.. Respondents

Mr.Ashish Shastri i/b Mr.Aniket Vagal for the Petitioner.

Mrs.S.D.Shinde, APP for the Respondent/State.

**CORAM : S.S.SHINDE &
MANISH PITALE, JJ.**

RESERVED ON	: 15th FEBRUARY, 2021
PRONOUNCED ON	: 23rd FEBRUARY, 2021

JUDGMENT (PER MANISH PITALE, J.)

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

2. By this writ petition, the petitioner has challenged the order dated 18th December, 2020 whereby the application for grant of

emergency Covid-19 parole submitted by the petitioner was rejected by respondent No.2 on the ground that he had not availed of furlough/parole leave even once earlier.

3. The petitioner is undergoing sentence of life imprisonment imposed upon him as per judgment and order dated 20th April, 2013 passed by the Sessions Court for the offence punishable under Section 302 of the Indian Penal Code.

4. In view of the amendment in the Prisons (Bombay Furlough and Parole) Rules, 1959 due to Covid-19 pandemic, the petitioner applied for grant of parole. As noted above, the application stood rejected only on the ground that the petitioner had not availed of furlough/parole leave even once earlier.

5. Mr.Shastri, learned counsel appearing for the petitioner submitted that the impugned order deserved to be set aside because a proper interpretation of the amended Rules would show that the application for grant of emergency Covid-19 parole could not have been rejected only on the ground of non availing of furlough/parole leave even once earlier. It was submitted by learned counsel for the petitioner that the application was not considered on merits by respondent No.2 and that therefore, the writ petition deserved to be allowed.

6. On the other hand, Mrs.Shinde, learned APP appeared on behalf of the respondent/State and opposed the grant of emergency Covid-19 parole. It was submitted that now the situation in the Yerwada Open District Prison had changed substantially. It was submitted that the number of inmates in the said prison are less than

the capacity. It was submitted that there is no crowd in the jail and that the authorities had sufficient infrastructure now to immediately take care of any inmate or staff, who may suffers from Covid-19 virus. On this basis, it was submitted that the petitioner could be permitted to apply afresh for grant of emergency Covid-19 parole.

7. Having perused the contentions raised on behalf of the rival parties, we are of the opinion that the ground of challenge raised on behalf of the petitioner deserves to be accepted. In the case of ***Kalyan s/o Bansidharrao Renge Vs. The State of Maharashtra & Anr.*** (Criminal Writ Petition No.ASDB-LD-VC 265 OF 2020) and ***Uzair @ Hujer S/o Rafiq Shaikh Vs. The State of Maharashtra & Ors.*** (Criminal Writ Petition No.2989 of 2020), this Court has already taken a view that non availing of furlough/parole even once earlier, cannot be a ground for rejecting the application for grant of emergency Covid-19 parole in view of the amended Prisons (Bombay Furlough and Parole) Rules, 1959. Therefore, to that extent the writ petition deserves to be allowed.

8. But, at the same time, we cannot ignore the ground realities, as pointed out by the learned APP on the basis of the report forwarded by respondent No.2. It is evident from the record that as on today, number of inmates in Yerwada Open District Prison are far less than the authorised capacity and that there is no overcrowding in the jail. There is no inmate, who is infected by Covid-19 virus as on date and that there is regular RT-PCR testing of the staff and the inmates being conducted. In view of the same, it becomes clear that the request of the petitioner for grant of emergency Covid-19 parole needs to be considered afresh, in the light of the changed

circumstances.

9. In view of the above, the writ petition is partly allowed. The impugned order is quashed and set aside. The petitioner is granted liberty to apply afresh for grant of emergency Covid-19 parole. In case, such an application is submitted by the petitioner, respondent No.2 shall dispose of the same, within two weeks of submission of such application, in the light of the circumstances prevailing as on today and in terms of the Prisons (Bombay Furlough and Parole) Rules, 1959 .

10. The writ petition is disposed of in the above terms. Rule is discharged accordingly.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)