

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.179 OF 2021

Abdul Haseeb Minhazul Haque,]
R/o. Post Office Gurhanwa, Village]
Dostiya, P.S. Kundawa Chainpur, Dist.]
East Champaran, Bihar – 845 304.]
[Presently lodged at Nashik Road]
Central Prison, Nashik Road.]]
On behalf of -
Mohammad Parvez Anwarul Haq.] ... Petitioner

Versus

1. **The State of Maharashtra**]
2. **Principal Secretary,**]
Home Department, State of]
Maharashtra, Mantralaya, Mumbai]
– 32.]
3. **The Superintendent,**]
Nashik Road Central Prison,]
Nashik Road.] ... Respondents

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Mr. Anil Lalla with Mr. Rijul and Mr. Aditya i/b Lalla and Lalla for the petitioner.

Mr. S.R. Shinde, A.P.P. for the respondent-State.

...

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

RESERVED ON : 01ST FEBRUARY, 2021.

PRONOUNCED ON : 04TH 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 petition, the petitioner has challenged the order dated 28/09/2020 passed by respondent No.3 whereby application for grant of emergency Covid-19 parole preferred by one Mohammad Parvez Anwarul Haq ("**the convict**") was rejected.
3. The convict is undergoing sentence on being convicted for offences punishable under Sections 302 and 301 of the Indian Penal Code ("**IPC**"). He has been sentenced to suffer imprisonment for life. The appeal filed against his conviction and sentence is pending before this court. The convict was arrested on 20/03/2011 and he has undergone about 10 years of imprisonment till today. He has applied for grant of emergency Covid-19 parole in the backdrop of the Covid-19 pandemic. By the impugned order dated 28/09/2020, respondent No.3 has rejected the application filed by the convict on

two grounds, firstly, that the convict had never released on furlough or parole even once before and secondly, on the ground that he was a resident of a place outside the State of Maharashtra.

4. Mr. Lalla, learned counsel appearing for the petitioner submitted that insofar as the first ground was concerned, this court had consistently held in various judgments and orders annexed to the writ petition, that grant of emergency Covid-19 parole could not be rejected only on the ground that the applicant/convict had not availed furlough or parole even once earlier. Insofar as the second ground is concerned, it was brought to the notice of this court that after the impugned order was passed, the respondent-State on 13/11/2020 had issued a notification deleting the words “and prisoners having their place of residence out of the State of Maharashtra” from Rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (“**the said Rules**”). On this basis, it was submitted that since both the grounds on which the impugned order was passed have now rendered unsustainable, the writ petition deserved to be allowed.

5. Additionally, learned counsel appearing for the petitioner invited attention of this court to an affidavit of cousin sister of the convict, tendered before this court, wherein it is stated that if the convict was granted parole, the said deponent would ensure that the convict does not commit any default of the terms and conditions that

may be imposed while granting him parole. Copies of the Aadhar Card and other details of the said deponent are placed along with the affidavit. On this basis, it was submitted that the present writ petition deserved to be allowed.

6. Mr. Shinde, learned A.P.P. appeared before the State and opposed the grant of writ petition.

7. Having heard learned counsel appearing for the rival parties, it becomes evident that in view of the pronouncements of this court, it has been consistently held that only because the convict has not availed furlough or parole even once earlier, it cannot be a ground for rejection of an application for grant of emergency Covid-19 parole. Therefore, the first ground stated in the impugned order is found to be unsustainable. Learned counsel appearing for the petitioner is justified in referring to and relying upon the judgments of the Division Bench of this court laying down the said position of law.

8. Insofar as the second ground of rejection of the application of the convict is concerned, although at the time when the impugned order was passed on 28/09/2020, the said Rules did stipulate that such parole could not be granted to a person, who was resident of a place outside the State of Maharashtra, the Notification dated 13/11/2020 issued by the respondent-State has taken away the basis of the second ground on which the application of the convict stood

rejected. A perusal of the said Notification would show that the relevant words have been deleted, as a result of which, the embargo against grant of parole to persons having residence outside the State of Maharashtra has been taken away. Therefore, the second ground on which the application of the convict was rejected, is also rendered unsustainable in view of the said Notification dated 13/11/2020 issued by the respondent-State.

9. Since the cousin sister of the convict has come forward before this court on affidavit stating that she is a resident of Mumbai and she undertakes to ensure that the convict would abide by the conditions imposed by this court for grant of parole as also the fact that both the grounds set out in the impugned order found to be unsustainable, we are of the view that the present writ petition deserves to be allowed.

10. Accordingly, the impugned order is set aside. The writ petition is allowed in terms of prayer clause (a) of the writ petition, which reads as under:

“a. That this Hon’ble Court be pleased to issue a Writ in the Nature of Mandamus or any other appropriate Writ, Order or Direction and be pleased to Quash and set aside the Order/Communication dated 28th September, 2020 of Respondent No.3 of refusing Emergency COVID-19 Parole to the Petitioner as covered by Notification dated 08th May 2020 issued

by the Government of Maharashtra and direct that the Petitioner be released on Emergency COVID-19 Parole leave initially for 45 days and thereafter as permissible on usual terms and conditions as may be imposed by Respondent No.3.”

11. It is made clear that the grant of such emergency Covid-19 parole is subject to the requirements specified in the said Rules. It is also directed that during the period of parole, the convict shall stay with his cousin sister, who has come forward and filed an affidavit before this Court. He shall report to the Dharavi Police Station on every Mondays and Thursdays during the period of parole. He shall surrender upon completion of the said period of parole.

12. Accordingly, rule is made absolute.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)