

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.553 OF 2021

Sandhya w/o Sanjay Lokhande]
(Petitioner's brother Sambhaji s/o Shivaji Rokade,]
Convict No.. 18088 confined at Yerwada Jail, Pune]
Age : 46 years, Occu : Housewife]
R/o Near Ujani Canal Krantinagar, Mohol]
Dist Solapur.]..... Petitioner.

Versus

State of Maharashtra]
Through Superintendent]
Yerwada Central Prison, Pune]..... Respondents.

Mr. Rupesh Jaiswal for the Petitioner.
Mjr. J P Yagnik, APP for the Respondent/State.

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

Reserved on : 11th FEBRUARY 2021
Pronounced on: 16th FEBRUARY 2021

JUDGMENT : (PER S S SHINDE, J)

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

2 By this Writ Petition the Petitioner seeks the following substantial
reliefs :-

“(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 12.11.2020 (Exhibit-A) and further direct the respondent to release the Petitioner's brother (Sambhaji S/o Shivaji Rokade, Convict No.18088 Yerwada Central Jail) on Emergency Parole Leave.

3 The present Writ Petition is filed by the sister of accused, who has been convicted by the learned Sessions Judge, Solapur for the offences punishable under Section 304(I) of the Indian Penal Code and sentenced to suffer punishment of 10 years imprisonment. The Petitioner's brother is presently confined in Central Jail, Yerwada, Pune. By this Petition the Petitioner is seeking directions to the Respondent to release her brother on emergency parole leave.

4 The learned counsel appearing for the Petitioner submits that the Petitioner's brother had applied for emergency Covid-19 parole leave, but the said application of the Petitioner's brother for emergency Covid-19 parole leave has been rejected by the Respondent on the ground that the convict is released only once on furlough leave and therefore he is not entitled for emergency Covid-19 parole leave. The said order dated 12/11/2020 is under challenge in the present Writ Petition by the Petitioner. It is submitted that the Petitioner is seeking release of her brother on emergency parole on the ground of pandemic Covid 19, and in view of notification dated 08/05/2020 issued by the Government of Maharashtra, the brother of Petitioner is entitled for emergency

Covid-19 Parole. It is submitted that the brother of Petitioner has been convicted under Section 304(I) of the Indian Penal Code and he has been sentenced of 10 years imprisonment.

5 Mr. Rupesh Jaiswal, the learned counsel appearing for the Petitioner relied upon the Division Bench Judgment of this Court in Kavita w/o Dilip Baviskar v/s. The State of Maharashtra in Criminal Writ Petition No.571 of 2020 in support of his contention that the ground stated in the impugned order was wholly unsustainable. He invites our attention to the impugned order passed by the Respondent-authority and submits that the application has been rejected by the said jail authority relying upon the Government Notification dated 08/05/2020 that the convicts, who have been convicted for the offences which are punishable for more than 7 years and released twice on parole and such convicts reported back in time on such release, are entitled for emergency parole. It was therefore submitted that the Writ Petition deserves to be allowed.

6 On the other hand J P Yagnik, the learned APP appearing for the Respondent/State vehemently opposed the prayer of the Petitioner. He submits that now the situation in Yerwada Central Prison has changed substantially. It was submitted that the number of inmates in the said prison are less than the capacity. It was further submitted that there is no crowd in the said jail and

that the authorities have sufficient infrastructure now to immediately take care of any inmate or staff, who may suffer from Covid-19 virus. He therefore submits that the Respondent-authority has rightly rejected the application of the Petitioner's brother for releasing him on emergency Covid-19 parole. On this basis, it was submitted that the convict i.e. the brother of the Petitioner could be permitted to apply afresh for grant of emergency Covid-19 parole leave.

7 We have given our due consideration to the rival submissions of the learned counsel appearing for the parties. With their able assistance we have perused the pleadings, grounds taken in the Petition and annexures thereto, as also we have perused the record forwarded by the Respondent to the office of the Public Prosecutor of this Court. The facts and figures stated therein indicate that in pursuance of release of number of inmates due to Covide-19 pandemic, now situation in the Yerwada Central Prison, Pune have changed substantially. There can be no doubt about the fact that the Petitioner is justified in relying upon the aforesaid judgment of this Court to claim that the reason assigned in the impugned order is unsustainable. We are in agreement with the said contention raised on behalf of the Petitioner and find that the impugned order cannot be sustained.

8 But at the same time, the fact situation on ground as on today,

cannot be ignored and, therefore, there is substance in the contention raised on behalf of the learned APP that the request of the Petitioner for grant of emergency Covid-19 parole leave to her brother needs to be considered afresh.

9 In that view of the matter, the Writ Petition is partly allowed. The impugned order is quashed and set aside. The convict i.e. the brother of the Petitioner is granted liberty to apply afresh for grant of emergency Covid-19 parole leave within one week from today. Upon filing such an application, the Respondent-authority shall decide the same on its own merits, as expeditiously as possible, however, within a period of two weeks from the date of filing of such application in accordance with the Prisons (Bombay Furlough and Parole) Rules, 1959 and keeping view the factors like the extent of spread of Covid-19 virus and conditions in jail.

10 Rule is made absolute to the above extent. The writ petition stands disposed of accordingly.

[MANISH PITALE, J]

[S. S. SHINDE , J]