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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.444 OF 2021

Futermal Kapoorji Borana	]	
At present lodged in Central Prison,	]	
Nashik.	]	
Permanent r/o Hanuman ji ki gali	]	
At post Bankali, Teshil : Sumerpur	]	
Dist. Pali (Rajasthan)	]	.. Petitioner
	]	

VERSUS

- | | | |
|---|---|-----------------------|
| 1. The State of Maharashtra |] | |
| Through its Principal Secretary, |] | |
| Home Department, |] | |
| Mantralaya, Mumbai – 32 |] | |
| |] | |
| 2. The Divisional Commissioner |] | |
| Nashik Division, Nashik, |] | |
| Office at Commissioner office Nashik |] | |
| Road, Nashik. |] | |
| |] | |
| 3. The Deputy Inspector General of Police (Prison) |] | |
| Central Division, Central Prison, |] | |
| Harsul, Aurangabad |] | |
| |] | |
| 4. The Superintendent of Prison |] | |
| Central Prison, Nashik Road, Nashik |] | |
| |] | .. Respondents |

Mr.M.M.Chaudhari for the Petitioner.

Mr.V.B.Konde-Deshmukh, APP for the Respondent/State.

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

**RESERVED ON : 25th FEBRUARY, 2021
PRONOUNCED ON : 08th MARCH, 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 1st December, 2020, passed by respondent No.4, whereby the application for grant of emergency parole has been rejected. According to the learned counsel appearing for the petitioner, the reasons assigned in the impugned order are not sustainable.
3. The petitioner was convicted for the offences punishable under Sections 395, 396 and 449 of the Indian Penal Code (“**IPC**”) in Sessions Case No.270 of 2002 and he has been sentenced to undergo life imprisonment. In view of the pandemic, the Prisons (Bombay Furlough and Parole) Rules, 1959 (“**the Rules of 1959**”), stood amended and provision was made for grant of emergency parole also referred to as, “emergency Covid-19 parole”. On 23rd November, 2020, the petitioner filed the application for grant of emergency parole under the amended Rules of 1959 before respondent No.4.
4. By impugned order dated 1st December, 2020, the application stood rejected, after taking note of the situation in the Central Prison, Nashik Road pertaining to the number of inmates and the extent to which the Covid-19 pandemic has affected the inmates.

Respondent No.4 also took note of the fact that on earlier occasions, the petitioner had returned late, when he was granted parole leave. Respondent No.4 also recorded that since the prisoners convicted for the offences punishable under Sections 392 to 402 of the IPC were not eligible for grant of parole under Rule 4(2) of the aforesaid Rules, the application could not be granted.

5. Mr.Chaudhari, learned counsel appearing for the petitioner, submitted that the reasons stated in the impugned order were not sustainable for the reason that in the context of emergency parole, there is no question of applicability of any bar towards grant of parole leave. It was submitted that the whole purpose of introducing amendment in the said Rules was to ensure that the prisons were decongested and the spread of pandemic in the prisons was brought under control. As regards the petitioner having returned late on earlier occasions when he was granted parole leave, it was submitted that as per the relevant Rules, for every day of returning late, the petitioner had already suffered deduction of days of remission. On this basis, it was submitted that the impugned order deserved to be set aside.

6. On the other hand, Mr.Konde-Deshmukh, learned APP appearing on behalf of the respondents, submitted that cogent reasons had been assigned in the impugned order and that therefore, no interference was warranted in writ jurisdiction.

7. We have perused the impugned order and considered the rival contentions raised before us. A perusal of the impugned order shows that respondent No.4 has categorically stated about the

number of inmates in the aforesaid prison, as also the capacity of the said prison to accommodate the inmates. It is evident from the facts and figures stated in the impugned order that the number of inmates was less than the total capacity of the prisoners, thereby indicating that the problem of overcrowding was not prevalent. The impugned order also shows that regular testing of inmates of Covid-19 is being undertaken. At the point in time when the impugned order was passed, it is recorded that there was no inmate suffering from Covid-19 infection. This is relevant because the amendment for grant of emergency Covid-19 parole was brought into force to ensure that the Covid-19 infection does not spread in the prison. The aforesaid facts and figures do indicate that respondent No.4 took into consideration the ground realities while passing the impugned order.

8. It is also recorded in the impugned order that when the petitioner was released on parole leave in the year 2005, he had returned after a delay of 7 days. When he was released on parole leave in the year 2007, he had returned after a delay of 203 days. Similarly, when he was released in the year 2012 on parole leave, he had returned after a delay of 1 day and in the year 2013, when he was released on parole leave, he had returned after a delay of 4 days. These facts are undisputed and show that the petitioner returned late after he was granted parole leave, on each occasion since the year 2005. Although, the number of days of delay would be adjusted towards remission, but that in itself cannot be a ground to ignore the propensity of the petitioner to not report within time upon grant of parole leave.

9. Apart from this, it is an admitted position that the petitioner is undergoing sentence of life imprisonment for conviction under Sections 395, 396 and 449 of the IPC. The Rules of 1959 specifically provides that the prisoners, who are convicted of offences under Sections 392 to 402 of the IPC, are not eligible for grant of furlough/parole leave. Therefore, it is evident that the reliance on the said Rules is correctly placed by respondent No.4 in the impugned order while rejecting the application filed by the petitioner. We find no substance in the contention raised on behalf of the petitioner that such a bar will not operate while considering the application for grant of emergency Covid-19 parole.

10. In view of the above, there is no substance in the present writ petition and accordingly it is dismissed.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)