

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.767 OF 2021

Pramod Shankar Jadhav]
Aged about 40 years, presently incarcerated]
at Kolhapur Central Prison as]
Convict Prisoner No.C-3420 Custody)]
R/o. R J K Gram Laxamiching Ngar, Ganesh]
Hospital, Kalam Niwas, Naupada, Thane-400062]..... Petitioner.

versus

1] State of Maharashtra]
through its Home Ministry, Mantralaya]
Madame Cama Road, Mumbai – 400 032]
]]
2] Superintendent,]
Kolhapur Central prison, Kalamba]
Kolhapur, Maharashtra 416007]..... Respondents.

Ms. Payoshi Roy a/w Ms. Chandni Chawla i/by Dr. Yug Mohit Choudhary for
the Petitioner.

Mr. K V Saste, APP for the Respondents/State.

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

Reserved on : 27th April 2021
Pronounced on: 29th April 2021

JUDGMENT : (PER S S SHINDE, J)

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

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

“(i) Release the Petitioner on Emergency Covid Parole on his Personal Bond, or a low cash or surety bail for the initial period of six months or till such time as the spread of Covid has been contained in Maharashtra.”

3 The Petitioner has been convicted along with his other co-accused by the learned Special Judge (MCOC Act) Thane vide judgment dated 20/10/2005 for the offences under Sections 364 r/w 34, 395, and 397, 387 r/w Section 34, 342 r/w 34 of the Indian Penal Code and 3(1)(ii), 3(2) and 3(4) of the MCOC Act and has been sentenced to undergo imprisonment for life, a cumulative fine of Rs.15,04,000/- and in default sentence of 10 years. The Petitioner has been arrested in Crime No.87 of 2001 of Murbad Police Station, Thane. The Petitioner is presently incarcerated at Kolhapur Central prison as Convict Prisoner No.C-3420. By this Writ Petitioner the Petitioner is seeking directions to the Respondent to release him on emergency parole leave.

4 The learned counsel appearing for the Petitioner submits that the Petitioner prays for Covid Parole leave as per the directions of the High Court Committee dated 25/03/2020. It is submitted that the Petitioner had applied for emergency Covid-19 parole leave, but the said application of the Petitioner for emergency Covid-19 parole leave has been rejected by the Respondent-Authority on the ground that pursuant to being released on parole for 30 days

on 25/06/2013, the Petitioner returned 421 days late. It is also submitted that the Petitioner has been penalized for reporting late from parole leave by deducting his remission permanently. The learned counsel for the Petitioner submits that the Petitioner has already undergone the substantive sentence under MCOC Act and it is only because of poverty that the fine amount could not be paid as a result of which the Petitioner is undergoing further incarceration. It is further submitted that the Petitioner is a 40 years old person and, he has already completed his substantive sentence and 4 years of his in default sentence, and if he is released on covid-19 parole leave, he is not likely to abscond.

5 The learned counsel appearing for the Petitioner submits that the impugned order was wholly unsustainable. She 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 on the ground that when in past the Petitioner was released on parole, he reported 421 days late. She further submits that the application of the Petitioner has been rejected by the Respondent-Authority on the ground that in view of Government Notification dated 08/05/2020, the Petitioner is not entitled for emergency parole. It is therefore submitted that the Writ Petition deserves to be allowed.

6 On the other hand K V Saste, the learned APP appearing for the

Respondent/State vehemently opposed the prayer of the Petitioner. He submits that the Petitioner was convicted for the offence punishable under the MCOC Act. Learned APP appearing for Respondent-State submits that the prayer of the petitioner to release him on emergency (Covid-19) parole has rightly been turned down by the Respondent Authority, relying upon the notification dated 8th May 2020 issued by the Government of Maharashtra, Home Department. It is submitted that utmost care is being taken in the prison by the officers and employees working in the prison, by examining the convicts by thermal scanning and RT-PCR tests. as also the masks are being provided to all convicts free of costs. He submits that at present, there are no convicts who are tested positive/Covid-19 affected in the prison. Therefore, learned APP submits that the prayer of the petitioner to release him on emergency (Covid-19) parole cannot be favorably considered. He therefore submits that the Respondent-authority has rightly rejected the application of the Petitioner for releasing him on emergency Covid-19 parole. He therefore submits that the Writ Petition may be dismissed.

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.

8 We have carefully perused the impugned order (Annexure-A Page No.13) of a Writ Paper Book, wherein it has been mentioned that the Petitioner did not deposit fine amount of Rs.15,04,000/-. It is also mentioned that number of prisoners lodged in the Kolhapur Central Prison are less than its actual capacity to accommodate the inmates, and there is sufficient space to accommodate the present Petitioner and to follow the Covid-19 protocols. It is stated that utmost care is being taken in the prison by the officers and employees working in the prison, by examining the convicts by thermal scanning and RT-PCR tests, and at present, there are no convicts who are tested positive of Covid-19 affected in the prison, and there is also Isolation Room in the prison for the purpose of keeping the Covid-19 affected convicts separately.

9 It is an undisputed fact that when the Petitioner was released earlier on furlough leave, he did not report within time and he was required to be arrested and then he was brought back to the jail by 421 days delay.

10 In the report submitted by the jail authority, it is stated that the Petitioner has been convicted for the offence punishable under MCOC Act and therefore he is not entitled to apply for parole/furlough/emergency Covid-19 parole. The Petitioner has undergone actual 14 years imprisonment and at present the Petitioner is in jail since he could not deposit the fine amount.

Therefore, the Petitioner has already undergone sentence ordered for the offence punishable under MCOC Act. Hence on that ground the Petitioner could not deny the emergency Covid-19 Parole. It is an admitted fact that the Petitioner did not surrender within time when he was earlier released on furlough and he was arrested and brought back to the jail after 421 days. However, presently there is serious situation due to Covid-19 pandemic and virus is spreading very rapidly and thereby affecting life of inmates. Keeping in view aims and objects of notification dated 08/05/2020 issued by the Government of Maharashtra, we are of the opinion that the Petitioner's case deserves to be re-considered by the Respondent-Authority. Accordingly, the impugned order passed by the Respondent-Authority is quashed and set aside. The Petitioner is granted liberty to file fresh application forthwith. In case such an application is filed by the Petitioner, the Respondent-Authority is directed to decide the same as expeditiously as possible, however, within two weeks from filing such application in accordance with law and on its own merits and keeping in view the factors like the extent of spread of Covid-19 virus and conditions in jail.

11 Rule is partly made absolute to above extent. The writ petition stands disposed of accordingly.

[MANISH PITALE, J]

[S. S. SHINDE , J]