

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 1428 OF 2021

Anwar Abdul Aziz Pathan

Age : 34 years, Occupation : Nil,
Residing at Room No. 3856,
Bhaskar Nagar, Shivmandir Area,
Morivali, Ambarnath (W),
Tal. Ambarnath, Dist. Thane.

.... Petitioner

Versus

1. The State of Maharashtra

2. The Superintendent,
Kolhapur Central Prison,
Kalamba, Kolhapur

3. Senior Police Inspector
Ambarnath Police Station,
Ambarnath, Dist. Thane

....Respondents

Mr.N.N. Gawankar i/b Mr. Manas N. Gawankar for petitioner.

Mr. J.P. Yagnik, APP for State.

CORAM : S. S. SHINDE &

N.J. JAMADAR, JJ.

Reserved for Judgment on : 23rd August 2021.

Judgment Pronounced on : 30th August 2021.

JUDGMENT : (PER N.J. JAMADAR, J.)

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

2. The petitioner, who is undergoing sentence for the offences punishable under sections 302, 452, 143, 147 to 149 and 506(2) of

the Indian Penal Code, 1860 ('the Penal Code') and section 3 read with section 25 of the Indian Arms Act, 1959 at Central Prison, Kolhapur, Kamba, assails the legality and correctness of the intimation letter, dated 17th February 2021, whereby the petitioner was directed to surrender to prison revoking the order dated 5th June 2020 releasing the petitioner on emergency Covid 19 Parole in accordance with the provisions contained in Rule 19(1)(C)(ii) of the Prisons (Bombay Furlough and Parole) Rules, 1959 ('the Rules, 1959').

3. Shorn of superfluities, the background facts leading to this petition can be stated as under :

By a judgment and order dated 16th August 2011, in Sessions Case No. 46 of 2003, the petitioner came to be convicted for the offences punishable under sections 302, 452, 143, 147 to 149 and 506(2) of the the Penal Code and section 3 read with section 25 of the Indian Arms Act, 1959 and sentenced to suffer imprisonment for life for the major offence. In the wake of Covid-19 Pandemic, the petitioner was ordered to be released on emergency parole by order dated 5th June 2020 initially for a period of 45 days.

4. The petitioner asserts that by intimation letter dated 17th February 2021 (Exh.'C' to the petition), without any rhyme or

reason, the petitioner was directed to surrender back to prison as the order releasing the petitioner on emergency Covid-19 Parole was allegedly revoked.

5. The said intimation letter, according to the petitioner, is legally unsustainable, arbitrary, unreasonable and in complete derogation of the principles of natural justice. Arbitrariness is manifest as no reason was ascribed for the alleged revocation of the emergency parole. The petitioner has been unjustifiably discriminated as the other prisoners, who were released on emergency parole, were granted the extension of parole leave by 30 days, at a time, in accordance with the rules. Hence, this petition.

6. An affidavit in reply has been filed by Mr. Chandramani A. Indurkar, Superintendent, Kolhapur Central Prison, Kalamba. It was contended that the period of emergency parole was duly extended by the authorities. However, a communication was received from the Senior Police Inspector, Ambarnath Police Station on 16th February 2021, informing the respondent No.2 that the petitioner had not complied with the condition of reporting to the nearest police station for marking attendance for the last 3 to 4 months and had on 13th February 2021, joined a political party at Ambarnath and there was likelihood of commission of offences as

during the Election of the Municipal Council of Ambarnath, in the past, untoward incidents and serious offences had occurred. Thus, on the basis of the said report, vide communication dated 16th February 2021, the emergency parole leave came to be revoked for breach of conditions on the part of the petitioner. Copy of the communication, dated 16th February 2021 is annexed to the affidavit in reply.

7. In the meanwhile, the petitioner surrendered back to the prison on 24th May 2021.

8. An affidavit in rejoinder came to be filed by Shamimbano Sahjad Khan, the mother-in-law of the petitioner. The contention of respondent No.3 of breach of condition of the attendance on the part of the petitioner was sought to be met by affirming that the police officials of Ambarnath Police Station blatantly declined to mark the attendance of the petitioner, as no orders of extension were received by Ambarnath Police Station. The act of the petitioner joining a political outfit by itself, according to the deponent, could not have been a ground to revoke the emergency parole leave, as it had not resulted in any unrest or breach of public tranquility in Ambarnath area. It was further asserted that the wife of the petitioner is critically ill and has been admitted at

General Hospital, Malad and the presence of the petitioner is required to attend to her. Thus, the petitioner be ordered to be released on parole.

9. In the backdrop of the aforesaid pleadings, we have heard Mr. Gawankar, the learned counsel for the petitioner and Mr. Yagnik, the learned APP for the State. With the assistance of the learned counsels for the parties, we have perused the material on record including the report submitted by the Superintendent of Prison.

10. Mr. Gawankar submitted that the impugned intimation letter, whereby the emergency parole leave was revoked, was beyond the province of the authority of respondent No.2. A two fold submission was sought to be canvassed. One, the respondent No.2 had no authority to revoke the order of release on parole. Two, in any event, the respondent No.2 could not have passed the order of revocation of parole leave without providing an opportunity of hearing to the petitioner. Mr. Gawankar also laid emphasis on the fact that the intimation letter, dated 17th February 2020 (Exh.'C' to the petition) which was addressed by the Senior Police Inspector, Ambarnath Police Station, was bereft of reason for the revocation. By no stretch of imagination, said intimation letter can be construed as an order of revocation, canvassed Mr. Gawankar.

11. In opposition to this, Mr. Yagnik, the learned APP would urge that the release of the petitioner on parole was conditional on good behaviour. One of the express conditions was marking presence at the nearest police station once in a period of 30 days. There is no material to indicate that the petitioner had complied with the said condition. On the contrary, the petitioner indisputably participated in political activity and joined the political outfit and thereby caused threat to public peace and tranquility. In the circumstances, the respondent No.2 was well within his rights in revoking the parole leave, submitted Mr. Yagnik.

12. To start with, it would be imperative to note that the order dated 5th June 2020, whereunder the petitioner was released on Covid-19 emergency parole, incorporated a condition that the petitioner would mark his presence once in 30 days at the nearest police station and that the petitioner would keep peace and be of good behaviour.

13. Rule 19(1)(C)(ii) of Rules, 1959 reads as under :

“(C) On declaration of epidemic under the Epidemic Diseases Act, 1897, by State Government:

(ii) For convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by Superintendent of Prison, if the convict has returned to prison on time on last

2 releases (whether on parole or furlough), for the period of 45 days or till such time that the State Government withdraws the Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days.

Provided that the aforesaid directions shall not apply to convicted prisoners convicted for serious economic offences or bank scams or offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA etc. (which provide for additional restrictions on grant of bail in addition to those under the Code of Criminal Procedure, 1973 (2 of 1974) and also presently to foreign nationals....”

14. In accordance with the Rule 19(1)(C)(ii), a convict who is sentenced to suffer imprisonment for seven years or more, can be released on emergency parole initially for a period of 45 days and the said period stands extended periodically in a block of 30 days each till the time the notification issued by the State Government under the Epidemic Diseases Act, 1897 remains in force. The said rule further provides that the convicted prisoners shall report to the concerned police station, within whose jurisdiction they are residing, once every 30 days. Thus, it becomes abundantly clear that the condition of attendance at the jurisdictional police station

flows from the rule itself.

15. In the light of aforesaid regime under Rules 1959, the submissions on behalf of the petitioner now fall for consideration.

16. The first challenge on behalf of the petitioner that there was no order which precedes the intimation letter dated 17th February 2021 (and which in itself cannot be said to be an order of revocation) does not seem to be well grounded in facts. In fact, the said intimation letter dated 17th February 2021, makes reference to the revocation order dated 16th February 2021, which came to be annexed to the affidavit in reply (as Annexure III). From a bare perusal thereof, it appears that the driving force for the order of revocation was, in turn, the communication dated 16th February 2021 by Ambarnath Police to the Superintendent, Prison. Upon perusal of the said communication from Ambarnath Police, the respondent No.2 arrived at a conclusion that the petitioner had not adhered to the conditions, subject to which he was released on Covid-19 emergency parole, and, thus, proceeded to revoke the said order of release on parole.

17. The second limb of the submission of Mr. Gawankar was that no opportunity of hearing was provided to the petitioner before the order of revocation was passed. In the absence of such opportunity

of hearing, the revocation falls foul of fundamental principles of natural justice. It would be an arbitrary exercise of powers by the authorities, in the event, a legitimate release on parole is permitted to be revoked by the authority at its whim and caprice without assigning any reason or providing a semblance of hearing, urged Mr. Gawankar.

18. The aforesaid submission is required to be appreciated in the backdrop of the fact that the condition to mark attendance at the jurisdictional police station once every 30 days, is prescribed by the very rule, under which a prisoner is entitled to be released on emergency parole. Its purpose cannot be over-emphasized. The jurisdictional police station, in the case at hand, reported that the petitioner did not attend the police station for the preceding 3 to 4 months. Pertinently, the petitioner did not approach the Court with a case that the jurisdictional police station refused to mark his presence and thus the breach of condition attributed to the petitioner was *malafide*. The said stand was sought to be taken in the affidavit in rejoinder. Nonetheless, the stand is bereft of particulars. The affidavit in rejoinder does not specify the dates on which the petitioner attended the police station and yet the concerned officer declined to mark the presence of the petitioner

thereat.

19. The principles of natural justice, it is trite, cannot be resorted to in the abstract. Nor can those principles be imported in all situations. A profitable reference in this context can be made to the judgment of the Supreme Court in the case of ***A.S. Motors Private Limited Vs. Union of India & Ors.***¹. The observations of the Supreme Court are extracted below :

“8. Rules of natural justice, it is by now fairly well settled, are not rigid, immutable or embodied rules that may be capable of being put in straitjacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries. What the courts in essence look for in every case where violation of the principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably. The doctrine of audi alteram partem is thus aimed at striking at arbitrariness and want of fair play. Judicial pronouncements on the subject have, therefore, recognised that the demands of natural justice may be different in different situations depending upon not only the facts and circumstances of each case but also on the powers and composition of the tribunal and the rules and regulations under which it functions. A court examining a complaint based on violation of rules of natural justice is entitled to see whether the aggrieved party had indeed suffered any prejudice on account of such violation. To that extent there has been a shift from the earlier thought that even a technical infringement of the rules is sufficient to vitiate the action. Judicial pronouncements on the subject are legion. We may refer to only some of the decisions on the subject which should in our opinion suffice.

9. In Suresh Koshy George v. University of Kerala AIR 1969 SC 198, this Court while examining the content and the sweep of the rules approved the view expressed in Russell v. Duke of Norfolk 1949 1 All ER

1 (2013) 10 SCC 114.

109 CA in the following words: (Suresh Koshy case, AIR p. 201, paras 7-8) :

“7. ... The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent on the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions.”

8 In Russell v. Duke of Norfolk, All ER at p. 118 D-F, Tucker, L.J., observed :

‘There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirement of natural justice must depend on the circumstances of the case, the nature of inquiry, the rules under which the Tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used, but, whatever standard is adopted, one essential is that the person concerned should have a reasonable opportunity of presenting his case.’

20. In the case at hand, the condition, subject to which, the petitioner was released on parole, was such that the petitioner could perform the same by a positive act. In such a situation, where the petitioner allegedly did not mark his attendance at the jurisdictional police station and there was resultant breach, the petitioner cannot insist for an opportunity of hearing and determination of the said issue on facts. It was for the petitioner to

offer an explanation either for the non-appearance or attribute *malafide* to the authorities, at the earliest possible opportunity. In the absence thereof, we find it rather difficult to accede to the submission of Mr. Gawankar that in the absence of opportunity of hearing, where there is a clear breach of condition, subject to which the prisoner is released, the authority is denuded of power to revoke the parole.

21. We find substance in the submission of Mr. Yagnik, the learned APP that the act of the petitioner joining a political outfit, while he was released on parole, cannot be said to be totally innocuous. In a given situation, the fact that a convict, while being on parole, joins a political party, may not by itself, amount to an act which is in breach of the condition to maintain peace and be of good behaviour. However, if there are attendant circumstances which render such political activity prone to disturb public peace and tranquility, the authorities would be justified in being alarmed by such activity. In the case at hand, the communication by Ambarnath Police was to the effect that the elections to Municipal Council were in the offing and in the elections to the said Council, in the past, there were incidents of violence. In that backdrop, the jurisdictional police thought it appropriate to report the

omission and conduct of the petitioner to respondent No.2. In the circumstances of the case, the said aspect appears to be a relevant consideration.

22. In any event, we cannot loose sight of the substance of the matter. The petitioner was released on parole on 5th June 2020. The petitioner surrendered back to prison on 24th May 2021. For almost one year, the petitioner was on Covid-19 emergency parole. It is imperative to note that the situation which arose on account of Covid-19 Pandemic has eased of. The threat of spread of contagion has subsided. At this juncture, we do not find any justification for reviving the order of release of the petitioner on Covid-19 parole.

23. As regards the exigency of the situation, which arose on account of the ill health of the wife of the petitioner, in our view, the same can be addressed by giving liberty to the petitioner to apply for regular parole on the said count. We are, thus, inclined to dismiss the petition with the said liberty.

24. Hence, the following order :

O R D E R

The petition stands dismissed.

The petitioner is at liberty to make an application for regular parole.

In the event, the petitioner makes an application for regular parole, the Competent Authority shall decide the same as expeditiously as possible and preferably within a period of three weeks from the date of receipt of such application.

Rule stands discharged.

[N.J. JAMADAR, J.]

[S.S. SHINDE, J.]