

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1892 OF 2021

Aamir Gous Pathan,	]	
Convict No.C/7135, Aged – 31 years,	]	
Occ. Nil, Confined at Kolhapur	]	
Central Prison, Kalmaba.	]	...Petitioner
vs.		
1. State of Maharashtra,	]	
Through Deputy Inspector General of	]	
Prison, Kolhapur.	]	
	]	
2. The Superintendent,	]	
Central Prison, Kalamba.	]	...Respondents

Ms.Shweta D.Wankhede for petitioner.

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

**CORAM : S.S. SHINDE &
N.J. JAMADAR, JJ.**

Reserved for Judgment on : 4th August 2021.

Judgment Pronounced on : 6th 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-convict has invoked writ jurisdiction of this court seeking a direction to the Superintendent, Central Prison, Kalamba-respondent No.2 to condone the delay in surrendering to prison and not to hold the overstay against the petitioner in the matter of grant of parole.

3. The petition arises in the backdrop of the following facts :

(a) The petitioner was released on furlough on 27th January 2021. He was ordered to return to prison on 26th February 2021.

(b) On 25th February 2021, the petitioner had the RTPCR test. He was found Covid positive and advised home rest and isolation for 17 days. Post isolation and quarantine period, the petitioner got himself tested again on 19th March 2021. RTPCR test of the petitioner again turned out positive. Eventually, after the test dated 3rd April 2021, declared the petitioner Covid negative, he surrendered on 5th April 2021.

(c) As the petitioner apprehended that the said delayed reporting by 38 days, on account of such emergent situation, would be arrayed against him in the matter of consideration of parole/furlough in future, the petitioner filed an application to condone the delay. As the said prayer was not considered

favourably, the petitioner preferred this petition.

4. Having regard to the nature of the grievance, on 17th July 2021, this court passed the following order :

“3. In the light of submissions made across bar, we grant liberty to the petitioner to file fresh application for Covid-19 emergency parole and in case such application is filed by the petitioner, we direct the 2nd respondent to decide the same as expeditiously as possible, however, within 10 days from filing the application and keeping in view the fact that the petitioner was earlier released on Covid-19 emergency parole and he could not surrender within time, since he had tested positive.

4. Such decision so taken by the Respondent No. 2 should be communicated to Mr. Yagnik, the learned APP appearing for Respondent-State and to the Petitioner. List on 4th August, 2021.”

5. In pursuance of the aforesaid directions, the respondent No.2 passed an order on 3rd August 2021 and rejected the request of the petitioner to release him on emergency Covid-19 parole on the ground that the petitioner had overstayed for 38 days, when he was released on furlough, and the said conduct gave rise to apprehension that the petitioner may jump parole.

6. In the light of the aforesaid development, the petitioner has renewed the prayer in the instant petition. We have heard Ms. Wankhede, the learned counsel for the petitioner and Mr. Yagnik, the learned APP for the State.

7. Ms. Wankhede would urge that the respondent No.2 had not properly appreciated the emergent circumstances which prevented the petitioner from reporting to prison on the scheduled date, i.e., 26th February 2021, though the petitioner was willing and desirous to report on time. Ms. Wankhede took us through the RTPCR reports and medical certificate of the petitioner to bolster up the submission that the petitioner was prevented from surrendering to prison on 26th February 2021 by unavoidable circumstances. To hold the said period of overstay against the petitioner is simply unreasonable, urged Ms. Wankhede.

8. In opposition to this, Mr.Yagnik, the learned APP submitted that the non-reporting to prison for initial 17 days, after the petitioner was found Covid positive on 25th February 2021, may be legitimately condoned. However, there is no justification for overstay beyond the said period of 17 days. In the circumstances, the respondent No.2 was justified in holding the said period of overstay against the petitioner.

9. Indisputably, the petitioner had tested Covid positive on 25th February 2021. The medical certificate issued by Government Medical College and Hospital, Miraj, records that the petitioner was advised home rest for 17 days. It is imperative to note that the

sample of the petitioner was again collected on 17th March 2021 and still the petitioner was found Covid positive on 19th March 2021. It further appears that on 20th March 2021, the petitioner addressed a communication to the respondent No.2 pointing out the fact that, as of 19th March 2021, he was found Covid positive, with a request not to take any adverse action.

10. In our view, the aforesaid factors could not have been lost sight of. A Covid negative report would have been insisted upon by the authorities before the petitioner was readmitted in prison. The endeavour of the petitioner to test himself for virus was bonafide. In the face of the material on record, we find that the reason assigned by the petitioner for not reporting to prison on the scheduled date and till the time he surrendered is genuine and supported by the documents of unimpeachable character. The action on the part of respondent No.2 in discarding the said reason is unreasonable and arbitrary.

11. There is another factor which bears upon the controversy. The petitioner was released on furlough in the year 2019 and did report to prison on time. Moreover, the petitioner reported to prison without loss of time after he was found Covid negative. This conduct of the petitioner has not been properly taken into

account. In the circumstances of the case, in our view, there was no justifiable material to draw an inference that the petitioner may jump parole and thereby reject the application by invoking Rule 4(20) of the Prisons (Bombay Furlough and Parole) Rules, 1959.

12. For the foregoing reasons, we are inclined to allow the petition and direct the respondent No.2-The Superintendent, Central Prison, Kalamba to consider the prayer of the petitioner for release on emergency Covid-19 Parole afresh. However, the aforesaid factor of overstay of 38 days shall not be taken into account as a ground to reject the prayer for release on parole either under Rule 4(20) or Rule 19(1)(c)(ii) of Prisons (Bombay Furlough and Parole) Rules, 1959.

13. We further direct that the overstay for 38 days shall not be considered as a ground for rejection of the prayer of the petitioner for furlough and/or parole in future.

Rule made absolute in the aforesaid terms.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)