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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 385 OF 2021

Nigonda Hanmant Birajdar	]	
Aged 32 years, Occu : Nil,	]	
R/o At-Jangalgi, Post-Shirnandgi,	]	
Taluka-Mangalwedha,	]	
District Solapur.	]	.. Petitioner

VERSUS

1. The State of Maharashtra,	]	
	]	
2. The Director General of Prisons,	]	
MS, Mumbai	]	
	]	
3 The Superintendent of Prisons,	]	
Kolhapur Central Prison,	]	
Kalamba, Kolhapur.	]	.. Respondents

Ms.Madhavi Ayyapan i/b Talekar & Associates for
the Petitioner.

Mr.J.PYagnik, APP for the Respondent/State.

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

**RESERVED ON : 4th FEBRUARY, 2021
PRONOUNCED ON : 16th FEBRUARY, 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. The petitioner had filed the present writ petition, initially for a direction to respondent No.3, the Superintendent of Prisons, Kolhapur Central Prison to decide his application for grant of emergency parole in view of certain judgments and orders passed by this Court. A prayer was also made for a direction to the respondents to release the petitioner on emergency parole. During the pendency of the writ petition, by an order dated 22nd October, 2020, respondent No.3 rejected the application for grant of emergency Covid-19 parole. Accordingly, the petition was amended to raise grounds to challenge the said order.

3. The petitioner was convicted by the judgment and order dated 23rd November, 2017 passed by the Sessions Court at Pandharpur under Sections 143, 147, 148, 323, 302, 504, 506 read with Section 149 of the Indian Penal Code and Sections 3 and 25 of the Indian Arms Act. The petitioner was arrested during the course of investigation and he is in custody in pursuance of his conviction.

4. The petitioner was granted furlough leave for a period of 22 days, after which he returned back to custody within time.

5. In pursuance of the amendment in the Prisons (Bombay Furlough and Parole) Rules, 1959, the petitioner submitted an application for grant of emergency parole on the ground of Covid-19 pandemic and the overcrowding in the Kolhapur Central Prison. As noted above, during the pendency of the present writ petition, on 22nd October, 2020, respondent No.3 passed the impugned order rejecting the application filed by the petitioner.

6. Ms.Ayyapan, learned counsel appearing for the petitioner, submitted that the impugned order was wholly unsustainable because the only reason stated therein was that since the petitioner had not availed of the furlough/parole leave twice before, he was ineligible for grant of emergency parole due to Covid-19 pandemic. Attention of this Court was invited to the judgments and orders passed by the Division Bench of this Court wherein it was categorically held that merely because the convict had not availed of furlough/parole leave twice earlier, he cannot be deprived of emergency parole due to Covid-19 pandemic. It was further submitted on behalf of the petitioner that the Kolhapur Central Prison was overcrowded wherein number of staff and inmates were infected by Covid-19 virus, due to which it is imperative that the impugned order be set aside and the prayer for grant of emergency parole to the petitioner needs to be allowed.

7. On the other hand, Mr.J.P.Yagnik, learned APP submitted that although the grounds stated in the impugned order could not be sustained in view of specific pronouncement of this Court holding that emergency parole could not be denied to a convict merely on the ground that he had not availed of furlough/parole atleast twice earlier, yet it was submitted that now the situation in various prisons, including the Kolhapur Central Prison had changed substantially, in view of the improvement of the situation pertaining to Covid-19 pandemic, as also the fact that the number of inmates in the prison had reduced. It was further submitted that in the report received from respondent No.3, which reiterated the facts and figures stated in the impugned order, it was clearly stated that none

of the inmates in the Kolhapur Central Prison are suffering from Covid-19 virus and that sufficient measures had been adopted to ensure that neither the staff nor the inmates suffer from the infection and even if they did so, prompt remedial measures were taken. On this basis, it was submitted that even if the impugned order was unsustainable on the ground on which it has issued, prayer for grant of emergency parole of the petitioner needs to be considered afresh, in the light of the present circumstances pertaining to Covid-19 pandemic.

8. We have heard the learned counsel appearing for the rival parties. Since the learned APP has conceded that there are already judgments of this Court interpreting the amendment in the Prisons (Bombay Furlough and Parole) Rules, 1959 whereby the provision for grant of emergency Covid-19 was incorporated, we do not propose to discuss in detail the grounds of challenge raised on behalf of the petitioner, on the basis of the said judgments. Therefore, it becomes clear that ground stated in the impugned order dated 22nd October, 2020 while rejecting the application of the petitioner, is unsustainable. The application for grant of emergency parole on the ground of Covid-19 pandemic could not have been rejected merely because the petitioner had availed of furlough leave only once before. Therefore, to that extent the impugned order is found to be unsustainable.

9. At the same time the impugned order dated 22nd October, 2020 as well as the report submitted by respondent No.3 to the office of the Public Prosecutor, show that the number of inmates in Kolhapur Central Prison stood reduced. It is specifically stated that

none of the inmates in the prison were suffering from Covid-19 virus infection at that point in time. It is also stated that appropriate remedial measures were taken where required and that the emergency situation had been diluted to a large extent.

10. Today, we are in February, 2021 and the effect of the Covid-19 pandemic, as of now, appears to have diminished in its intensity and the present situation pertaining to the pandemic and the ground realities pertaining to the same in the Kolhapur Central Prison become an important factor for considering the prayer of the petitioner.

11. In view of the above, we are of the opinion that even if the impugned order is unsustainable, the present writ petition can be only partly allowed, so that the prayer for grant of emergency parole due to Covid-19 pandemic, raised on behalf of the petitioner can be considered on the basis of the situation prevailing today.

12. Accordingly, the writ petition is partly allowed. The impugned order dated 22nd October, 2020 is quashed and set aside.

13. The petitioner is granted liberty to move an application for grant of emergency parole on the ground of Covid-19 pandemic before respondent No.3, within a period of two weeks from today. Respondent No.3 is directed to immediately decide such application, if moved by the petitioner, at the earliest and in any case, within a period of two weeks of such application being submitted by the petitioner.

14. Rule is made absolute in above terms. The writ petition stands disposed of.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)