

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

WRIT PETITION NO. 2011 OF 2021

Adinath Trimbak Varpe

... Petitioner

Vs.

The State of Maharashtra and Anr.

... Respondents

Mr. Aniket Vagal for the Petitioner.

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

**CORAM : S.S. SHINDE &
ABHAY AHUJA, JJ.
DATE : 3RD JUNE 2021**

(VACATION COURT THROUGH VIDEO CONFERENCING)

P.C. :

1. Present criminal writ petition has been moved by a convict suffering life imprisonment, presently lodged in Yerwada Open Prison, for offences punishable under sections 302 and 309 of the Indian Penal Code. Petitioner has served more than 9 years of sentence.

2. His application for emergency parole application, has been turned down by impugned order dated 15th March, 2021 for the reason, petitioner has in the past never gone on either furlough or

parole as per the office record, thereby, not fulfilling required criterion that convict should have returned on time twice on last two releases.

3. Learned advocate for petitioner submits that the petitioner had not availed of furlough or parole even once till date in last more than 9 years and as such, there is no question of his surrendering on time twice before. He submits that Rule 19 (1) (C) is with regard to release of prisoners on emergency parole, categorizing them with reference to period of sentence - seven years or less and above seven years. For seven years and above category, rule 19 (1) (C) (ii) apparently refers to release and return on time, twice. He submits that reference to return on time twice earlier, in rule 19 (1) (C) (ii) has been with a view to have assurance of conduct/tendency of the prisoner to abide by conditions and rules. He submits that for absence of release and return on time twice before making application for emergency parole, release of petitioner should not be hindered, looking at the intendment underlying the provision.

4. He further submits that, moreover, this court has often come across applications involving similar circumstances as in the

present case. He refers to decisions of this high court, dated 30th June, 2020 in criminal writ petition No. 571 of 2020 in the case of “Kavita Dilip Baviskar V/s The State of Maharashtra” and, dated 5th January, 2021 in criminal writ petition No. 1626 of 2020 in the case of “Navshad @ Naishad Makrani Batla V/s State of Maharashtra”, where under impugned orders by authorities rejecting request for release on emergency parole, like the one impugned here, were set aside and respondents were directed to give benefit of amended rule 19 (1) (C) (ii) to the petitioners on usual terms and conditions.

5. COVID-19 pandemic has necessitated amendment to Rule 19 (1) incorporating clause (C), reading thus,

“19. When a prisoner may be released on parole.

(1) Emergency Parole -

(A)

(B)

(C) On declaration of epidemic under the Epidemic Diseases Act,

1897, by State Government :

(i)

.....

(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 and prisoners having their place of residence out of the State of Maharashtra. ”

6. Aforesaid Rule 19 (1) (C) (ii) says that on declaration of epidemic under Epidemic Diseases Act, 1897, applications of convicts suffering punishment, *inter alia*, above seven years be appropriately considered for release on emergency parole by superintendent of prison, if the convict has returned to prison on time twice, after releases. Thus, it would be seen that underlying intention of the provision is to meet up with and adapt to purpose of notification under the Epidemic Diseases Act, the exercise being in the nature of human rights to safeguard the health in epidemic.

7. As division bench of this court had noted in its order dated 30th June, 2020 in “Kavita V/s The State” (supra) that under the amending notification, there is a direction to jail authorities to see that prisoners who are behind bars be released on emergency parole, in view of the situation created by COVID- 19 virus pandemic and under the same, there is a condition that a prisoner who is otherwise eligible to get furlough or parole would get benefit of amended provision. While under Rule 19 (1) (C) (ii), it has been referred to that convicts in the past who had been released on furlough or parole and returned on time on two occasions would be considered, such condition, the division bench had observed, turns out to be rather ‘strange’ in quite a few cases like the one in the case of petitioner in that matter (to a large extent similar to the one in present matter) even if he is actually behind bars for more than eleven years. It had been observed that not availing of furlough / parole earlier, if other conditions of furlough / parole are fulfilled, would not be read to dis-entitle the benefit of the amended rule.

8. On similar analogy, it appears criminal writ petition No. 1626 of 2020 had been allowed by another division bench on 5th January, 2021 in case of petitioner, whose application for

emergency parole pursuant to Rule 19 (1) (C) (ii) had been rejected having not availed of furlough / parole at all while the petitioner had been behind bars for more than sufficient period making him eligible for parole. The division bench, referring to decision in “Kavita V/s The State” (supra) had observed that condition of return on time twice is to ensure that the convict would return to jail on completion of parole period and such condition shall not hold back a convict, who is otherwise eligible to get benefit of the amended rule, if he has completed three years’ jail term.

9. Having appreciated the matter as above, the division bench had considered it expedient to release petitioners finding that order impugned in said petition would not be sustainable.

10. The rule appears to have its genesis in COVID-19 pandemic is to see that the prisoners as well as jail authorities and employees should not be infected/affected under epidemic and to avoid and / or control spread of the disease. Reference to two releases and return shall not undo basic purpose underlying the provision in otherwise eligible cases. Purpose underlying the condition of release and return on time twice is to have assurance of conduct of convict to

surrender on time on expiry of furlough / parole period would be to reduce probability of contrary conduct. To follow the provision rigidly in the otherwise eligible cases, would not be compatible with the intention underlying incorporation of amended provision.

11. Having regard to that in quite a few cases of convicts, insistence to have compliance of condition of release and return on time twice referred to under rule 19 (1) (C) (ii) appears to be onerous when convict has not at all availed of or has availed of furlough / parole only once earlier, despite otherwise being eligible his case would not be entertained. Therefore, not being released earlier on two occasions, having regard to purpose and intendment underlying incorporation of provision clause (C) (ii) into Rule 19 (1) for emergency parole, we deem it appropriate that such prisoners may not be detained from availing of emergency parole only for the reason that he had not availed furlough / parole twice or only once, if they are otherwise eligible. In such cases, benefit to have release on parole, pursuant to rule 19 (1) (C) (ii) shall not be held back. There is no other reason coming forth other than reference to requirement under the rule to decline the benefit to prisoner.

12. We, therefore, deem it appropriate to follow the course charted by decisions of division benches (supra) and find that in the present matter claim for release on emergency parole would not be held back for non fulfillment of requirement to have release and return on time twice.

13. As such, writ petition succeeds. Impugned order dated 15th March 2021 passed by Superintendent of Yerwada Open District Prison, Pune is set aside. Jail authority may release petitioner on emergency parole, without insisting on fulfillment of condition of release and return on time twice if he is otherwise eligible.

(ABHAY AHUJA, J.)

(S.S. SHINDE, J.)