

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2130 OF 2021

Prakash Dattatray Khandekar and Ors. ...Petitioners
vs.
The State of Maharashtra and Ors. ...Respondents

Mr. Rahul Arote, for the Petitioners
Dr. F.R. Shaikh, APP for the Respondents-State.

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

**JUDGMENT RESERVED ON : 10th JUNE, 2021
JUDGMENT PRONOUNCED ON: 19th JUNE, 2021**

JUDGMENT (Per N.J.Jamadar,J.)

. Rule. Rule made returnable forthwith and with the consent of the counsel for the parties, heard finally at the stage of admission.

2. The petitioners, who are convicts, have assailed the order dated 7th April, 2021 passed by the Superintendent, Nashik Road, Open District Prison, rejecting the application of the petitioners for emergency parole in accordance with the provisions contained in Rule 19(1)(c) of The Prisons (Bombay Furlough and Parole) Rules, 1959, promulgated in view of Covid 19 pandemic.

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

a] The petitioners were convicted for the offences punishable under sections 302, 307, 324, 504, 506 read with 149 and section 147 and 148 of the Indian Penal Code, 1860 by the learned Sessions Court, Mangaon, Dist.Raigad by judgment and order dated 17th April, 2015 and sentenced to suffer life imprisonment for the major offence punishable under section 302 read with 149 of the Indian Penal Code.

b] In the wake of pandemic, in accordance with the provisions contained in Rule 19(1)(c) of The Prisons (Bombay Furlough and Parole) Rules, 1959, the petitioners were released on emergency parole by an order dated 14th May, 2020 initially for a period of 45 days. The said period came to be extended by a block of 30 days, at a time.

c] While the petitioners were on emergency parole, the Appeal preferred by petitioners against the conviction and sentence in Sessions Case No. 20 of 2012, being Appeal No. 517 of 2015 came to be decided by a Division Bench of this Court on 25th February, 2021. The petitioner No. 1 stood convicted for the offence punishable under section 302 of Indian Penal Code and sentenced

to suffer imprisonment for life, and petitioner Nos. 2 to 4 stood convicted for the offence punishable under section 307 of Indian Penal Code and sentenced to suffer rigorous imprisonment for a period of 10 years, with fine and default stipulation. Since, the petitioners were on emergency parole, this Court directed the petitioners to surrender before the Court of learned Sessions Judge, Mangaon to undergo the remainder of the sentence. In deference to the said order, the petitioners surrendered on 25th March, 2021.

d] In view of the surge in Covid 19 infection, the petitioners preferred application for their release on emergency parole, on 26th March, 2011. By the impugned order, the Respondent No. 2 was persuaded to reject the application for the sole reason that the petitioners were directed by this Court to surrender to undergo the remainder of the sentence, by the judgment and order dated 25th February, 2021 in Appeal No. 517 of 2015. Being aggrieved, the petitioners have invoked the writ jurisdiction of this Court.

4. We have heard Mr. Rahul Arote, learned counsel for the petitioners and Dr. F.R. Shaikh, learned APP for the Respondents-State, at some length.

5. Mr. Arote would urge that the impugned order suffers from a complete non application of mind. The Respondent No. 2, according to Mr. Arote, misdirected himself in construing the order passed by this Court in Appeal No. 517 of 2015 to surrender to undergo the remainder of the sentence as an impediment in releasing the petitioners on emergency parole, though the case of the petitioners squarely falls within the ambit of Rule 19(1)(c) of The Prisons (Bombay Furlough and Parole) Rules, 1959.

6. In contrast, Dr. Shaikh, learned APP made a faint attempt to support the impugned order. The report submitted by the Respondent No. 2, also makes an endeavor to justify the impugned order.

7. As a matter of fact, there was a huge surge in Covid 19 infections in the months of April and May, 2021. The said surge, termed “second waive” was more severe than the first one. The Supreme Court, in Suo Motu Writ Petition (C) No.1 of 2020 by its order dated 7th May, 2021 passed certain directions to arrest the spread of infection. In continuation of earlier directions, with a view to de-congest the prisons, the Supreme Court passed, inter

alia, the following directions:

11. Third, due to the immediate concern of the raging pandemic, this Court has to address the issue of de-congestion. We find merit in the submission of Mr. Colin Gonsalves, learned Senior Counsel appearing on behalf of the applicant, that the High-Powered Committee, in addition to considering fresh release, should forthwith release all the inmates who had been released earlier pursuant to our order 23.03.2020, by imposing appropriate conditions. Such an exercise is mandated in order to save valuable time.

12. Fourth, further we direct that, those inmates who were granted parole, pursuant to our earlier orders, should be again granted a parole for a period of 90 days in order to tide over the pandemic.

8. The Supreme Court thus, in terms, directed that in addition to release of prisoners who were not hitherto released those of the inmates who had been released earlier, pursuant to the order of the Supreme Court dated 23rd March, 2020, be forthwith released by imposing appropriate conditions. In the case of inmates who were granted parole earlier, it was directed that they be again released on parole for a period of 90 days in order to tide over the pandemic.

9. It is true that the aforesaid order came to be passed subsequent to the rejection of the application of the petitioners, by

the impugned order. However, in our view, even on the date of the rejection of the applications for parole, there was no impediment in releasing the petitioners-convicts on emergency parole by invoking the provisions contained in Rule 19(1)(c) of The Prisons (Bombay Furlough and Parole) Rules, 1959. Since, the appeals of the petitioners were dismissed by this Court, it was necessary to direct that the petitioners shall surrender to undergo the remainder of the sentence. This direction, however, did not imply that the petitioners were not entitled to be again released on parole, if they were otherwise entitled to. The fact that the petitioners did surrender pursuant to the order passed by this Court in Criminal Appeal No.517 of 2015 ought to have been construed in favour of the petitioners as it underscored their *bonafide*.

10. In other words, the order passed by this Court in Appeal No. 517 of 2015 whereby the order of conviction and sentence came to be modified did not change the status of the petitioners as the convicts. The judgment passed in Appeal had no bearing on the entitlement of the petitioners for emergency parole. Thus, the Respondent No. 2 was not justified in declining

the prayer to release on emergency parole on the said count.

11. The upshot of aforesaid consideration is that the impugned order deserves to be quashed and set aside. The petitioners are entitled to be released on emergency parole, in accordance with the Rule 19(1)(c) of The Prisons (Bombay Furlough and Parole) Rules, 1959. Hence, the following order:

ORDER

- 1] The Petition stands allowed.
- 2] The impugned order dated 7th April, 2021 passed by Respondent No. 2 stands quashed and set aside.
- 3] The Respondent No. 2 is directed to release the petitioners on emergency parole, initially for a period of 45 days in accordance with the Rule 19(1)(c)(ii) of The Prisons (Bombay Furlough and Parole) Rules, 1959 on usual terms and conditions.
- 4] Necessary release order be passed by 22nd June, 2021.
- 5] The Registry and the learned A.P.P. shall communicate this order to Respondent No. 2, by fax and email as well.
- 6] Rule made absolute in the aforesaid terms.
- 7] All concerned shall act on an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)