

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2362 OF 2021

Pramod Shankar Jadhav ...Petitioner
vs.
The State of Maharashtra and Another ...Respondents

Ms. Payoshi Roy a/w. Ms. Chandani Chawla i/b. Dr. Yug
Choudhari, for the Petitioner.
Mrs. M.H. Mhatre, APP for the Respondent-State.

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

JUDGMENT RESERVED ON : 17th AUGUST, 2021
JUDGMENT PRONOUNCED ON : 25th AUGUST, 2021

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

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

2. The petitioner, who is a life convict, takes exception to the order dated 18th May, 2021 passed by the Superintendent, Kolhapur Central Prison, Kalamba whereby the prayer of the petitioner to release him on emergency Covid 19 parole under Rule 19(1)(c)(ii) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (the Rules, 1959) came to be rejected.

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

a] The petitioner came to be convicted in a Special Case No. 3 of 2002 for the offences punishable under sections 364A, 395, 397, 387, 342 read with 34 of Indian Penal Code, 1860 (the Penal Code) and section 3(1)(ii), 3(2), 3(4) of Maharashtra Control of Organised Crime Act, 1999 (MCOCA), by the judgment and order dated 20th October, 2005 and sentenced to suffer imprisonment for life for the major offences and pay fine of Rs. 15,04,000/- and in default suffer imprisonment for of 10 years.

b] The petitioner has undergone the substantive sentence. Since the petitioner has not paid fine, the petitioner has been undergoing sentence in default of payment of fine since 5th October, 2016.

c] On 25th June, 2013 the petitioner was released on parole for 30 days. The petitioner jumped the parole. He was required to be arrested and brought back to prison after 421 days. For the said overstay, the petitioner is being prosecuted for the offence punishable under section 224 of Indian Penal Code, 1860 (the Penal Code) in R.C.C.No.7296 of 2014.

e] In the wake of Covid 19 pandemic, the petitioner filed an application for emergency Covid 19 parole. The said request was

turned down by the respondent No. 2 by the order dated 18th December, 2020. The principal reasons were the conviction of the petitioner for the offences punishable under MCOCA and overstay by 421 days when the petitioner was released on parole in the year 2013.

f] The petitioner invoked the writ jurisdiction of this Court by filing Writ Petition No. 767 of 2021. By the judgment and order dated 29th April, 2021 this Court directed the respondent No. 2 to consider the prayer of the petitioner for release on emergency parole afresh. It was, inter alia, opined that since the petitioner has already undergone the entire substantive sentence for the offences punishable under MCOCA his prayer could not have been negated on the said count.

g] Pursuant to aforesaid judgment and order, the petitioner filed a fresh application. By the impugned order dated 18th May, 2021, the respondent No. 2 again rejected the prayer of the petitioner by ascribing two-fold reasons. One, on account of safety and health measures taken by the prison administration, the situation which arose on account of Covid 19 pandemic, was under control. Two, the petitioner had not returned to prison, when he was released on parole in the year 2013 and was required to be arrested and brought back to prison after 421 days. Being aggrieved, the petitioner has again invoked writ jurisdiction.

4. We have heard Ms. Roy, learned counsel for the petitioner and

Mrs. Mhatre, learned APP.

5. With the assistance of the learned counsel for the parties, we have carefully perused the material on record including the reports submitted by respondent No. 2, to which the chart containing the details of the incarceration of the petitioner is annexed.

6. Ms. Roy strenuously submitted that the rejection of the prayer of the petitioner for release on emergency parole, despite direction of this Court, in the judgment and order dated 29th April, 2021 in Writ Petition No. 767 of 2021, to reconsider the request of the petitioner, is wholly unsustainable. Ms. Roy would urge that the prayer of the petitioner came to be turned down on the self same grounds, which weighed with the said authority in passing the earlier order of rejection dated 18th December, 2020, which was quashed and set aside by this Court. Ms. Roy further submitted that the impugned order suffers from grave infirmity as respondent No. 2 has not adequately considered the fact that the petitioner has already undergone the substantive sentence and continues to be incarcerated for default in payment of fine to the tune of Rs. 15,04,000/-, on account of poverty. The apprehension entertained by the respondent No. 2 on the part of the petitioner jumping the parole based on the overstay in the year 2013, was also stated to be unfounded as

sufficient time has elapsed from the said lapse. In any event, to lend assurance for the timely return of the petitioner, two persons have now volunteered to stand surety for the petitioner, whose affidavits have been filed on record, submitted Ms. Roy.

7. In opposition to this, Mrs. Mhatre, learnedd APP supported the impugned order on both the counts. It was urged that having regard to the period of overstay (421 days), the inference drawn by respondent No. 2 about the possibility of petitioner not returning to prison cannot be said to be unfounded. Secondly, the claim of the authority that the situation is under control can be said to be a exaggerated, submitted Mrs. Mhatre.

8. We have given our anxious consideration to the rival submissions. At the outset, we deem it appropriate to extract the observations of this Court in the judgment and order dated 29th April, 2021 whereby and whereunder, respondent No. 2 was directed to reconsider the prayer of the petitioner. The relevant part of paragraph No. 10 reads as under:

10.Therefore, the Petitioner has already undergone sentence ordered for the offence punishable under MCOC Act. Hence on that ground the Petitioner could not deny the emergency Covid-19 Parole. It is an admitted fact that the Petitioner did not surrender within time when he was earlier released on furlough and he was arrested and brought back to the

jail after 421 days. However, presently there is serious situation due to Covid-19 pandemic and virus is spreading very rapidly and thereby affecting life of inmates. Keeping in view aims and objects of notification dated 08/05/2020 issued by the Government of Maharashtra, we are of the opinion that the Petitioner's case deserves to be re-considered by the Respondent-Authority. Accordingly, the impugned order passed by the Respondent-Authority is quashed and set aside. The Petitioner is granted liberty to file fresh application forthwith. In case such an application is filed by the Petitioner, the Respondent-Authority is directed to decide the same as expeditiously as possible, however, within two weeks from filing such application in accordance with law and on its own merits and keeping in view the factors like the extent of spread of Covid-19 virus and conditions in jail.

9. In the aforesaid order, this Court made it explicitly clear that the petitioner cannot be deprived of the benefit of release on parole on the count that he has been convicted for the offence punishable under section MCOCA since the petitioner had already undergone the substantive sentence for the same. In this view of the matter, what remained for consideration was the situation in the prison and the delayed reporting by 421 days. In our view, these aspects cannot be appreciated without considering the period of sentence which the petitioner has already undergone.

10. The bare perusal of the chart containing the details of

incarceration would indicate that the petitioner is shown to have undergone almost 21 years and 8 months imprisonment. The substantive sentence for the offences came to an end on 4th October, 2016. The petitioner is undergoing sentence in default of payment of fine w.e.f. 5th October, 2016. We cannot lose sight of the fact that the petitioner came to be convicted for the offences punishable under section 3(1)(ii), 3(2), 3(4) of the MCOCA which prescribe the minimum fine of Rs. 5 lakhs, and thus the Special Judge could not have imposed fine less than Rs. 5 lakhs on each count. Evidently, the petitioner comes from poor strata of the society. Adverse social condition and poor financial position are the obvious consequences of an incarceration for 20 long years.

11. Indisputably, the petitioner overstayed by 421 days when he was released on parole in the year 2013. The petitioner has been penalized for the same by forfeiture of remission of sentence. In addition a prosecution for the offence punishable under section 421 of the Penal Code is pending. It would be contextually relevant to note that when the petitioner was released on parole in the year 2011, the petitioner had reported

to prison on time. Thus, the delayed reporting by 421 days, in the year 2013, in the backdrop of the period which had elapsed from the said lapse, and the substantive sentence having been already undergone by the petitioner cannot be arrayed against the petitioner forever. It would be unjust and unreasonable to deprive the petitioner of the benefit of the emergency parole for the said lapse.

12. There is another factor, which bears upon the claim of the petitioner. The chart of incarceration reveals that the petitioner has completed 14 years of actual imprisonment and was extended the benefit of premature release, upon completion of substantive sentence. However, the petitioner continues to be incarcerated on account of default in payment of fine. As indicated above, quantum of fine is huge by any standard. From this stand point, the submission on behalf of the petitioner that the petitioner continues to languish in prison on account of poverty cannot be said to be unsustainable. As regards the apprehension, on the part of the respondent No. 2 about the petitioner jumping the parole, we are of the view that two proposed sureties namely Rekha Rane and Anant Patil who have

filed their affidavits before this Court, appear to have standing in the society and are in a position to control the activities of the petitioner. Moreover, Police Inspector, Murbad police station has verified the credentials of those persons and authenticity of the documents submitted by them.

13. In the totality of the circumstances, in our view, the petitioner deserves to be released on Covid 19 emergency parole. Thus, we are inclined to allow the petition. Hence, the following order.

ORDER

- i] The petition stands allowed.
- ii] The petitioner be released on Covid 19 emergency parole in accordance with Rule 19(1)(c)(ii) of the Rules, 1959 on such terms and conditions which the respondent No. 2 may deem appropriate to impose in the facts of the case in addition to the following:-
 - a] Ms. Rekha Kate and Mr. Anant Patil who have filed affidavits before the Court, shall furnish a surety bond in the sum of Rs. 25,000/- each.
 - b] The petitioner, on his release, on parole shall attend

Murbad police station on every Monday in between 10 am to 12 noon to mark his presence.

c] The petitioner shall report back to prison upon the expiry of the period of emergency parole.

d] The petitioner shall abide by all the other terms and conditions as may be imposed by the respondent No. 2.

iii] Rule made absolute in aforesaid terms.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)