

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.2496 OF 2021

Shaikh Mukhtar Gafur ...Petitioner
vs.
The State of Maharashtra and Ors. ...Respondents
Mr. Aniket Vagal. for the Petitioner.
Mrs. M. H. Mhatre, for the Respondent

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

DATE : AUGUST 11, 2021

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

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

2. This petition under Article 226 of the Constitution of India takes exception to an order dated 2nd June, 2021 passed by the Superintendent, Nashik Road, Central Prison- respondent No. 2, whereby the application of the petitioner for release on emergency Covid-19 parole came to be rejected.

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

a) The petitioner has been convicted for the offences punishable

under sections 302, 147, 148, 149 and 326 of the Indian Penal Code, 1860 (the Penal Code). The petitioner was committed to prison to undergo the sentence of imprisonment for life for the major offences. In the year 2006, the petitioner was released on parole for the first time, and overstayed by 63 days. In the year 2007, the petitioner was released on furlough. However, the petitioner did not surrender and was apprehended and brought to prison after 3946 days. In the wake of Covid 19 pandemic, the petitioner applied for emergency parole in accordance with the Rule 19(1)(c) of the Prisons (Bombay Furlough and Parole), Rules, 1959 (the Rules, 1959). The application came to be rejected by order dated 19th September, 2020.

b] Being aggrieved, the petitioner had preferred Writ Petition No. 1655 of 2021, which came to be rejected by this Court (Coram: S.S. Shinde & Manish Pitale, JJ.) by judgment and order dated 29th April, 2021.

c] The petitioner claims that after the order of the Supreme Court in *Suo Motu Writ Petition (C) No.1/2020* dated 7th May, 2021, the petitioner again applied for emergency parole. The request was again turned down on the self same reasons of delayed reporting and overstay, by the impugned order dated 2nd

June, 2021. Hence, this petition.

4. Mr. Vagal, learned counsel for the petitioner would urge that the respondent No. 2 was not justified in rejecting the request of the petitioner for release on Covid-19 emergency parole on the self same grounds that in the year 2006 when the petitioner was released on parole, he had overstayed by 63 days and he had jumped furlough in the year 2007 and was required to be arrested and brought back to prison on 2nd February, 2018 i.e. after a lapse of 3946 days and, therefore, there was apprehension that if released, the petitioner would again abscond.

5. Mr. Vagal was at pains to explain the change in the circumstances since the rejection of the Writ Petition No. 1655 of 2021, by judgment and order dated 29th April, 2021, which would justify afresh consideration of the prayers for release in the present petition. A feeble attempt was made to bank upon the order of the Supreme Court dated 7th May, 2021 in Suo Motu Writ Petition (C) No.1/2020 wherein, in continuation of the earlier orders, the Supreme Court issued fresh directions, in the wake of the second wave of the pandemic.

6. With respect, we do not find any direction of the Supreme Court which would justify entertaining the prayer of the petitioner for emergency parole, which was turned down by this Court by an order dated 29th April, 2021. Mr. Vagal, made desperate attempt to invite our attention to the orders passed by this Court in Writ Petition (St.) No. 3210 of 2020 (Yakub Hussain Panwale vs. The State of Maharashtra) dated 1st December, 2020; Writ Petition (St.) No.3481 of 2020 (Ramesh Poona Sapkale vs. The State of Maharashtra) dated 17th December, 2020 and Writ Petition (St) No. 3029 of 2020 (Pratik Ambadas Borase vs The State of Maharashtra) dated 17th December, 2020, to bolster up the submission that in those cases the petitioner/prisoners therein, despite having reported late and/or overstayed, were directed to be released on emergency Covid 19 parole. We have perused the aforesaid judgments. Evidently, each of those judgments turns on the peculiar facts of the case.

7. In the case at hand, the petitioner had overstayed by a period of 3946 days. He was arrested after almost 11 years of the release on furlough. In this context, while negating the prayer of the petitioner in Writ Petition No. 1655 of 2021 (supra), this Court

has observed as under:

“5. In the said report, it is stated that when the petitioner was released earlier on furlough leave, he did not report on time after completion of the period of furlough leave and he was required to be arrested and brought back to the jail after 3949 days from the date of expiry of his furlough leave period. The Superintendent, Nashik Road Central Prison, Nashik, has expressed an apprehension that in case the petitioner is released on parole, he may abscond and may not come back to the jail. The apprehension expressed by the respondent – authority is well founded inasmuch as when the petitioner was earlier released on furlough, he did not report back on completion of the period of furlough leave and thereafter, he was arrested and brought back to the jail after 3949 days.

6. In that view of the matter, we are not inclined to entertain the prayer of the petitioner to release him on Covid-19 parole. Hence, the petition is rejected.”

8. The aforesaid reasons which weighed with this Court, in rejecting the prayer of the petitioner, still hold ground. The apprehension entertained by respondent No. 2 can not be said to be unfounded. The huge period of 11 years for which the petitioner made himself scarce fosters reasonable apprehension. The endeavour on the part of the petitioner to make out a cause of action for entertaining a fresh petition, after second application came to be rejected by respondent No. 2, in our view, does not merit countenance. Incidentally, by now, the situation which arose on account of Covid 19 pandemic has also eased of.

9. For the foregoing reasons, the petition deserves to be dismissed. Hence, the following order:

ORDER

- i] The petition stands dismissed.
- ii] Rule stands discharged.

(N.J.JAMADAR, J.)

(S.S.SHINDE, J.)