

(This is a corrected order, as per the speaking to minutes order dated 27th July, 2021.)

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

WRIT PETITION NO.2547 OF 2021

Subhadra Bhau Gurav
(Mother of convict Yogesh Bhau Gurav) ...Petitioner

vs.

The State of Maharashtra and Ors. ...Respondents

Ms. Harjeet Kaur, for the Petitioner
Mr. V.B. Konde-Deshmukh, APP for the Respondent-State.

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

**DATE : JULY 20, 2021
(THROUGH VIDEO CONFERENCING)**

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

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

2. This petition under Article 226 of the Constitution of India is preferred to quash and set aside the order dated 4th June, 2021 passed by respondent No. 2 whereby the application of the convict Yogesh Bhau Gurav, son of the petitioner, for release on emergency parole under Rule 19(1)(c) of the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959 (Rules, 1959) came to the rejected.

3. The petitioner's son Yogesh Bhau Gurav has been convicted for the offence punishable under section 302, 149, 120B, 143 and 148 of the Indian Penal Code and sentenced to suffer imprisonment for life. He is in custody since 18th January, 2010. The convict preferred an application to release him on emergency parole in the wake of Covid 19 pandemic, in accordance with the provision contained in Rule 19(1)(c)(ii) of the Rules, 1959. The application came to be rejected by respondent No. 4 by the impugned order dated 4th June, 2021 for the reason that the convict has reported late to prison by 45 days when he was released on furlough in the year 2017.

4. We have heard Smt. Harjeet Kaur, learned counsel for the petitioner and Mr. Konde-Deshmukh, learned APP for the respondents.

5. A report is tendered for the perusal of the Court today. A chart containing the details of the period of imprisonment actually undergone by the petitioner is annexed thereto.

6. The learned counsel for the petitioner submits that the only

ground on which the request of the convict for release on emergency parole in accordance with the provisions contained in Rule 19(1)(c)(ii) of the Prison Rules, came to be rejected, was the delayed reporting by 43 days when the convict was released on furlough on the previous occasion. The said ground in the circumstances of the case, according to the learned counsel for the petitioner, is not sustainable as, on the one hand, the convict has already undergone 11 years 4 months actual imprisonment and, on the other hand, for the delayed reporting the convict was awarded penalty of deduction of 215 days remission. The rejection of the prayer for release on emergency parole on the said count would cause serious prejudice to the convict, urged Ms. Kaur.

7. It is true that rule 19(1)(c)(ii) of the Rules, 1959 provides that to become eligible to be released on the emergency parole, the prisoner should have returned to the prison on due date on two previous occasions of release, either on parole or furlough. However, the said rule can not be construed de hors the facts of a given case.

8. In the instant case, we find that the convict has already

undergone a substantial period of actual imprisonment of 11 years and 4 months. For the delayed reporting of 43 days, he has been saddled with the penalty of deduction of 215 days of remission. Having regard to the object of introduction of the provision of emergency parole, in the wake of Covid-19 pandemic, in our view, it would be expedient to extend the benefit of the said provision to the convict. We are, thus, inclined to allow the petition. Hence, the following order.

ORDER

- a] The petition stands allowed.
- b] The order passed by respondent No. 4 dated 4th June, 2021 rejecting application for emergency parole stands quashed.
- c] The respondent No. 4 shall pass the order of release of the convict Yogesh Bhau Gurav on emergency Covid parole in accordance with the Rule 19(1)(c) of the Prison Rules, on usual terms and conditions which respondent No. 4 may find suitable in the circumstances of the case.
- d] The convict shall abide by the conditions which may be imposed by respondent No. 4.
- e] Necessary order be passed on or before 27th July, 2021.
- f] Rule made absolute in the aforesaid terms.
- g] All concerned shall act on an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)