

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2493 OF 2021

Anil Jagannath Yadav]
Age 29 years]
Row House No.03, Sai Row House,]
Upendra Nagar, Cidco, Nashik]
(presently lodged in Nashik Road Central Prison]
(At presently out on Parole Leave)]..... Petitioner

versus

The State of Maharashtra]
Through the Superintendent of Jail]
(Nashik Road Central Prison]
Jail Road, Nashik 422101]..... Respondent.

Mr. Bharat K Manghani for the Petitioner.
Mrs. A S Pai, PP for the Respondent/State.

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

DATE : 26th JULY 2021

ORAL JUDGMENT (PER N. J. JAMADAR, J)

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

2 The Petitioner has preferred this Petition for quashing and setting
aside the order dated 31st May 2021 passed by the Superintendent of Prison,

Nashik Road Central Prison, Nashik i.e. the Respondent No.1 whereby the Petitioner was directed to surrender on 16th July 2021 after completion of the period of 45 days from the day on which the Petitioner was released on emergency parole by order dated 31st May 2021 by invoking the provisions contained in Rule 19(1)(c) of the Prisons (Bombay Furlough and Parole) Rules 1959.

3 The substance of the Petition is that the direction for surrendering the Petitioner, after expiry of 1st period of 45 days, while notification issued under the Epidemics Act still remains in force, is in breach of the Rule 19(1)(c) of the Prisons (Bombay Furlough and Parole) Rules 1959 which mandates that the said period be extended by a further period of 30 days at a time or till the notification issued under the Epidemic Act remains in force.

4 It appears that during pendency of this Petition, the Petitioner has surrendered on 16th July 2021 in accordance with the impugned order. However, the fact remains that the Petitioner had sought extension of the period of Covid-19 Emergency Parole by a block of 30 days.

5 A Full Bench of this Court in the case of **Nagnath s/o Sakharam Mane v/s. The State of Maharashtra and anr. in Criminal Application No.4118 of 2019 in Criminal Appeal No.243 of 2019** has held that it is not obligatory for

a prisoner, who released on emergency parole, to file an application for extension of parole. In view of the provisions contained in Rule 19(1)(c), the authorities are required to extend the period by a block of 30 days at a time. In paragraphs 41 and 42 of the said judgment, the Full Bench has held as under :-

“41. It emerges that –

(a) -----

(b) it is not that necessarily prisoner would have to make an application seeking extension of emergency parole prior to completion of initial parole of forty five days as well as even for further extensions in blocks of thirty days till the notification under the ED Act is in force.

42. Issues referred to us are answered as under:

1. -----

2. Under the language employed in the text of rule 19 (1) (C) (i) in second sentence, by auto operation the emergency parole gets extended obviating an application for its extension.”

6 Moreover, the Supreme Court, in *Suo Motu Writ Petition (C) No.1 of 2020* by its order dated 16th July 2021 passed certain directions to arrest the spread of infection. In continuation of earlier directions to arrest the spread of infection, the Supreme Court passed, inter-alia, the following directions :-

“So far as those prisoners who have already been released on bail from the prison by virtue of Orders passed by this Court from time to time and on the basis

of recommendations of High Powered Committees constituted for the purpose are concerned, they shall not be asked to surrender to the prison, until further orders”

7 In the aforesaid view of the matter, in our view, it may not been appropriate to again direct the Petitioner to make an application for releasing him on emergency parole. The fact that the Petitioner has surrendered on his own in accordance with the impugned order dated 31st May 2021, underscores the bonafide of the Petitioner. Conversely, it indicates that the authorities had not taken steps to secure the presence of the Petitioner. We are therefore persuaded to direct the Respondent – Jail Authority to pass appropriate order of release of the Petitioner on emergency parole in continuation of the order dated 31st May 2021 on usual terms and conditions as the Respondent - Superintendent of Prison Nashik may find suitable in the facts of the case.

8 The Petition is allowed in the aforesaid terms. Rule made absolute.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]