

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2501 OF 2021**

Sahebrao Kaluram Bhintade
Age : 73 years, Occu. : Farmer
Permanent R/o. 203/204A,
Dhanlaxmi Co-operative
Society, Mohili Village,
Sakinaka, Mumbai

.... Petitioner

Versus

1. The State of Maharashtra
Through its Additional Secretary,
Home Department,
Mantralaya, Mumbai-32.

2. The Director General of Prisons,
MS, Mumbai.

3. The Superintendent of Prisons,
Kolhapur Central Prison,
Kalamba, Kolhapur.

....Respondents

Ms.Madhavi Ayyappan i/b Talekar and Associates for petitioner.
Smt. A.S. Pai, PP for respondents.

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

Reserved for Judgment on : 26th August 2021.

Judgment pronounced on : 16th September 2021.

JUDGMENT : (PER N.J. JAMADAR)

1. Rule. Rule made returnable forthwith and with the consent of the learned counsels for the parties, heard finally.
2. This petition under Article 226 of the Constitution of India assails the

order dated 7th May 2021, whereby the prayer of the petitioner to release him on emergency parole, in accordance with Rule 19(1)(C)(ii) of Prisons (Bombay Furlough and Parole) Rules, 1959 ('Rules, 1959'), came to be rejected. The petitioner has also prayed that the exception carved out by the proviso to the said rule which debars the prisoners convicted for serious economic offences or offences under Special Acts like MCOC, PMLA, MPID, NDPS, UAPA etc. from availing the benefit of the said provision be read down to hold that at least the convicts (from the excluded categories), who are 65 years of age and above, are entitled to the benefit of the said rule.

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

(a) The petitioner is a 73 years old convict. He claims to be suffering from several co-morbidities. By the judgment and order dated 31st August 2012 in MCOC Case No. 7/2008, the petitioner came to be convicted *inter alia* for the offence punishable under section 3(2) of The Maharashtra Control of Organised Crime Act, 1999 ('MCOC') and sentenced to suffer imprisonment for life. The petitioner has been incarcerated since 29th April 2008.

(b) By the order dated 29th May 2020, the petitioner was released on furlough for a period of 28 days. The petitioner sought extension of the period of furlough leave. However,

the authorities did not take any decision thereon. The petitioner was thus constrained to prefer writ petition being Criminal Writ Petition ASDB-LD-VC No.139 of 2020. By order dated 10th July 2020, the said writ petition came to be disposed with a direction to the authorities to decide the application preferred by the petitioner within a period of 15 days thereof, keeping in view the age of the petitioner and the several ailments, which the petitioner claimed to be suffering from, and the period of the sentence undergone by him.

(c) By an order dated 4th August 2020, the competent authority rejected the prayer for extension of furlough leave on the premise that furlough cannot be granted for more than 21/28 days in one calendar year.

(d) The petitioner surrendered and applied for emergency parole under Rule 19(1)(C)(ii) of the Rules, 1959. By the impugned order dated 7th May 2021, the petitioner's application came to be rejected, by invoking the proviso to Rule 19(1)(C), which excludes the prisoners, convicted for serious economic offences and offences under special acts like MCOC from the applicability of the rule which

empowers the authorities to release the prisoners on emergency parole on account of Covid-19 Pandemic.

(e) The petitioner has again invoked writ jurisdiction of this Court on the ground that the authorities have failed to take into account the new guidelines of the High Power Committee, especially Clause 16(v) of the Minutes of the meeting dated 7th/11th May 2021. Under the said guidelines, according to the petitioner, the authorities are enjoined to consider the cases of the prisoners above 65 years of age and having co-morbidities more sympathetically notwithstanding the rejection of their earlier applications. The authorities also lost sight of the fact that the State of Maharashtra has taken a stand before the Supreme Court in Suo Motu Writ Petition (C) No.1/2020, that the State has taken into consideration the age of the convicts and the co-morbidities suffered, if any, at the time of recommending the release of the prisoners from jails. Even otherwise, the convicts above 65 years of age form a class by themselves. Therefore, in order to achieve the object behind introducing Rule 19(1)(C) in the wake of Covid-19 Pandemic, the proviso to the said rule is required to be read down and the convicts who fall within

the ambit of the proviso, but are 65 years of age and above, are required to be extended the benefit of the said rule.

4. We have heard Ms.Madhavi Ayyappan, the learned counsel for the petitioner and Smt. A.S. Pai, the learned Public Prosecutor for the respondents. With the assistance of the learned counsels for the parties, we have perused the material on record including the orders passed by this Court in the previous proceedings initiated by the petitioner.

5. The thrust of the submission of Ms. Ayyappan was that a prisoner who has been convicted for the offences punishable under special enactments like MCOC, PMLA, MPID, NDPS, UAPA etc, enumerated in the proviso to Rule 19(1)(C)(ii) of the Rules 1959, cannot be debarred from claiming the benefit under the Rules *de-hors* the circumstances personal and peculiar to such convicts. A very rigid and strict interpretation of the proviso would defeat the very object of introducing the said rule. The prisoners, who are above 65 years of age and have co-morbidities, are at a greater risk of being infected by the contagion. The object of decongestion of prison to arrest the spread of the virus amongst the prisoners would be defeated if such prisoners are debarred from claiming emergency parole, urged Ms. Ayyappan. A purposive interpretation, according to Ms. Ayyappan, is warranted in the circumstances like the

present one, where the convict is 72 years old and suffering from co-morbidities. Moreover, the overall conduct of the prisoner also merits consideration. Since the petitioner has reported back to prison on due date, on all the eight occasions in the past, there is no justifiable reason to deny the benefit of emergency parole, submitted Ms. Ayyappan.

6. In opposition to this, Smt. Pai, the learned Public Prosecutor would urge that the authorities were fully justified in rejecting the prayer for emergency parole. Indubitably, the proviso to Rule 19(1)(C)(ii) disentitles the prisoner convicted for the economic offences and the offences punishable under special enactments from being released on emergency parole. It was urged that the said proviso is required to be appreciated in the light of the fact that the special enactments enumerated therein contain additional restrictions in the matter of release on bail, even during trial. Having regard to the gravity of the offences, the rule making authority has consciously excluded the category of prisoners who do not deserve the dispensation of emergency parole. Thus, no fault can be found with the impugned order.

7. In order to properly appreciate the aforesaid submission, we deem it appropriate to note the provisions of Rule 19(1)(C) and the recommendations of the High Power Committee, on which a very strong reliance is placed on behalf of the petitioner.

8. Rule 19(1)(C)(ii) of Rules, 1959 reads as under :

“19 When a prisoner may be released on emergency parole:-

(1) Emergency Parole –

(C) On declaration of epidemic under the Epidemic Diseases Act, 1897, by State Government:

.....

(ii) For convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by Superintendent of Prison, if the convict has returned to prison on time on last 2 release (whether on parole or furlough), for the period of 45 days or till such time that the

State Government withdraws the Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing once in every 30 days:

Provided that the aforesaid directions shall not apply to convicted prisoners convicted for serious economic offences or bank scams or offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA, etc. (which provide for additional restrictions on grant of bail in addition to those under the Code of Criminal Procedure, 1973 (2 of 1974) and also presently to foreign nationals.....”

9. Clause 16 of the minutes of meeting of High Power Committee reads as under :

“16 Having regard to the facts and circumstances and having taken stock of the entire situation arising out of the “second wave” of corona virus (Covid 19), this Committee issues the following guidelines/ recommendations :

(i) The decisions taken in the HPC meetings dated 25th March, 2020 and 11th May 2020 read with Corrigendum dated 18th May 2020 setting out the category of prisoners to be released on interim bail or emergency parole are reiterated and shall continue to operate.

(ii) The 12,751 Applications for interim bail which are still pending before the various Courts and all other applications for

interim bail filed during the interregnum claiming benefit of the decisions of the High Power Committee shall be decided within 10 days from today i.e. on or before 20 May 2021.

(iii) All pending Applications before the Authorities for emergency parole be also decided within a period of 10 days from today i.e. on or before 20th May 2021.

(iv) Considering the change in the circumstances, the 2,182 prisoners, whose Applications for interim bail were rejected, may apply for interim bail afresh and the same shall be considered by the Court without being influenced by the earlier orders passed by the Courts.

(v) Applications by the prisoners who fall in the category as determined by the HPC and who are 65 years of age and above, and having co-morbidities [as spelt out by Indian Council for Medical Research (ICMR)], shall be considered more sympathetically notwithstanding the rejection of their earlier Application, if any.

10. Evidently the proviso carves out the categories of prisoners who have been convicted for serious economic offences and offences under special enactments like MCOC, PMLA, MPID, NDPS, UAPA, etc. from the applicability of the rule which provides for release on emergency parole.

11. Ms.Ayyappan urged that the aforesaid proviso is required to be construed in the light of the guidelines issued by the High Power Committee, especially clause 16(v), extracted above, whereby the authorities have been directed to consider the cases of those prisoners who are 65 years of age and above and have co-morbidities more sympathetically. Support was sought to be drawn from the order passed by the Supreme Court on 16th July 2021 in Suo Motu Writ Petition (C) No.1/2020, whereby the the Member Secretaries of the National Legal

Services Authority and the States Legal Services Authorities were directed to collect information from the different States/Union Territories and submit a report stating clearly the norms/criteria adopted by the different State Governments/Union Territories, i.e., whether in the norms adopted, they have taken into consideration the age of the convicts and/or co-morbidities suffered, if any, at the time of recommending the release of the prisoners from jails.

12. Ms Ayyappan invited the attention of the Court to the affidavit filed on behalf of the State Government, wherein it was specifically affirmed that the age of the convict and/or co-morbidities suffered, if any, at the time of release of the prisoners from the jail, are taken into consideration by the State of Maharashtra. Reliance was sought to be placed on the afore-extracted clause 16(v) of the guidelines dated 7th/11th May 2021.

13. At the outset, we must note that though initially the petitioner claimed that he was suffering from co-morbidities and thus entitled to be favourably considered for release on emergency parole, in addition to the ground of being above 65 years of age, yet during the course of the submissions, Ms. Ayyappan restricted the challenge to that of being above 65 years of age only. It would be relevant to note that a certificate issued by the Medical Officer was annexed to the report submitted by the respondent No.3-the Superintendent of Prisons, Kolhapur Central Prison, Kalamba,

Kolhapur. The Medical Officer certified that the petitioner had not been suffering from any chronic illness and was not receiving any active line of treatment. He was clinically stable.

14. In the context of thrust of the submission on behalf of the petitioner, that the above-extracted guideline provides for release of the prisoners, whose cases are covered by the proviso to Rule 19(1)(C)(ii) of Rules, 1959, if they are above 65 years of age, it is imperative to note that the clauses in the guidelines are required to be construed as a whole. One clause of the guidelines cannot be read torn out of context. The sequence of the guidelines also deserves to be noted.

15. Evidently, the High Power Committee, under Clause (i), extracted above, reiterated in emphatic terms that the decisions taken in the previous meetings of HPC setting out the categories of prisoners to be released on interim bail or emergency parole shall continue to operate. The HPC, thus, did not tinker with the categorization of the prisoners, as determined earlier, for entitlement for interim bail or emergency parole. Clause 16 (v) of the guidelines, on which a very strong emphasis was laid on behalf of the petitioner, also indicates that the HPC did not intend to vary the categorization of the prisoners. It thus provides that the applications by the *prisoners who are in the category as determined by the HPC* and are above 65 years of age and have co-morbidities, shall be

considered more sympathetically notwithstanding the rejection of their earlier applications.

16. On a plain reading of the aforesaid guidelines, we find it rather difficult to accede to the submission on behalf of the petitioner that by virtue of the aforesaid guidelines, the HPC resolved to carve out a sub-category, out of the excluded category of prisoners under proviso to Rule 19(1)(C)(ii), who would be entitled to be released on interim bail or emergency parole, if they are above 65 years of age and have co-morbidities. In the face of reiteration of categorization in clause (i) and clause (v) of the guidelines, as extracted above, it may not be permissible to hold that the rigour of the proviso to Rule 19(1)(C)(ii) gets diluted if a prisoner is above 65 years of age and suffering from co-morbidities.

17. In our view, the intent of rule making authority in not extending the benefit of release on emergency parole for the prisoners who have been convicted for serious economic offences and offences punishable under special enactments, is required to be given full effect to. There is a definite rationale behind such exclusion. We are, thus, not persuaded to agree with the submission on behalf of the petitioner that the proviso be read down so as to carve out an exception to the prisoners, who are 65 years of age and above and are suffering from co-morbidities.

18. For the foregoing reasons, we do not find any justifiable reason to

interfere with the impugned order passed by the respondent No.3. Even otherwise, the situation which arose on account of Covid-19 Pandemic has eased of. At this juncture, we do not find any exceptional or extraordinary circumstance to direct the release of the petitioner on emergency parole despite the prohibition in the Rules, 1959.

19. Hence, the following order :

O R D E R

(a) The petition stands dismissed.

(b) The petitioner is, however, at liberty to apply for furlough and/or parole, in accordance with the governing rules, and the authorities shall decide such a prayer in accordance with the law, without being influenced by any of the observations made hereinabove.

Rule stands discharged.

[N.J. JAMADAR, J.]

[S.S. SHINDE, J.]