

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2633 OF 2021

Raju S/o Kaduba Jadhav]
(Petitioner's brother in law Amol S/o Dada Hivrle]
Convict-No.16014 confined at Central Jail Yerwada]
Pune)]
Age 52 years. Occu : Job,]
R/o : H.No.4-33-12-55, Near Milind Buddha Vihar]
Rama Nagar, Aurangabad].....Petitioner.

Versus

State of Maharashtra]
Through Superintendent]
Central Prison Yerwada, Pune].... Respondent.

Mr. Rupesh Jaiswal for the Petitioner.
Mrs. M H Mhatre, APP for the Respondent/State.

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

DATE : 18th August 2021

JUDGMENT : (PER S. S. SHINDE, J)

1 Rule. Rule is made returnable forthwith and heard with the
consent of the learned counsel, appearing for the Petitioner, and the learned
APP, appearing for the Respondent/State.

2 This Petition is filed for the following substantial relief :-

(B) By Writ of Mandamus or any other appropriate writ, order or directions in the like nature to quash and set aside the order of Respondent dated 12.06.2021 (Exhibit-A) and further direct the respondent to release

*the Petitioner's brother in law Amol S/o Dada Hivrale,
Convict-No.16014 Central Jail Yerwada, Pune, on
Emergency Parole Leave.*

3 The convict is the brother in law of the Petitioner, who has been convicted by the Sessions Judge, Shrirampur by order dated 26/04/2011 in Sessions Case No.55 of 2009 for the offence punishable under Section 302 of the Indian Penal Code and sentenced to suffer for life imprisonment. The convict came to be arrested and had been an under-trial prisoner from 08/08/2009.

4 The convict has preferred an application to the Respondent-Authority praying therein to release him on emergency parole leave. However, the said application of the convict came to be rejected by the Respondent/Authority by the impugned order dated 12/06/2021 on the ground that when the convict was released on earlier occasions, he surrendered late by 1 days and 69 days, and in view of the provisions of Rule 4(10) and 4(20) of the Prisons (Bombay Furlough and Parole) Rules, 1959, amended by Government Notification dated 16/04/2018, the convict is not entitled for being released on emergency parole leave.

5 The learned counsel for the Petitioner submitted that the convict was sufficiently punished for surrendering late when he was earlier released on parole and his name has been removed from remission register permanently. The learned counsel for the Petitioner invites attention of this Court to the

orders passed by this Court earlier and submitted that when there is incident of late surrender, and if convict has already been punished for such late surrender, on the said ground the convict cannot be denied covid emergency parole. It is submitted that if the convict is released on covid emergency parole, the uncles of Petitioner viz. Baburao Balwant Hivrane and Kaduba s/o Gajaba Jadhav are ready to stand as the surety and also ready to give additional surety to secure the presence of convict and/or to give cash security. It is also submitted that if the convict is released, he will abide by the conditions imposed and will mark his presence at the nearest police station. It is also submitted that on completion of covid parole period, he will surrender before the prison authorities.

6 The learned APP appearing for the Respondent/State, on the other hand, supported the impugned order of rejection of the application passed by the Respondent/Authority.

7 We have given our due consideration to the submissions made by the learned counsel for the Petitioner and the learned APP for the Respondent/State. With their able assistance we have carefully perused the pleadings and the grounds taken in the Writ Petition and the annexures thereto as also the reasons assigned in the impugned order.

8 As stated herein above, the convict made an application for emergency covid-19 parole, which came to be rejected by the Respondent/Authority i.e. the Superintendent of Yerwada Central Prison, Pune by the impugned order dated 12/06/2021 on the ground that he surrendered late on two occasions of his previous releases. It is recorded in the impugned order that the convict was released on 04/11/2014 for 30 days on parole, however, he did not surrender in time. The convict was arrested on 12/02/2015 and therefore the convict had over stayed the parole leave by 69 days. It is also recorded in the impugned order that when the convict was released on parole on earlier two occasions, he surrendered late, and therefore, he is not entitled for emergency parole. It is also observed that in view of the provisions of Rule 4(10) and 4(20) of the of the Prisons (Bombay Furlough and Parole) Rules, 1959 amended by Government Notification dated 16/04/2008 as also in terms of Government Notification dated 08/05/2020, the Petitioner is not entitled to be released on parole.

9 The learned APP has tendered across the bar the tabular chart showing the details regarding the parole/furlough leave granted to the convict and the period undergone in jail by the convict. It is mentioned in the said chart that when the convict was released on parole on 22/03/2012 he surrendered himself only by 1 day late, and when he was released on parole on 04/11/2014, he did not surrender in time and therefore he came to be arrested

and brought back in the jail when already there was a delay of 69 days. It is also mentioned in the said chart that when the convict was released on furlough leave on 29.10.2013, he surrendered within the stipulated time.

10 We have carefully perused the chart produced by the learned APP and noticed that for the period of over stay, the convict was sufficiently punished by removing his name from the remission register. It is not in dispute that the convict surrendered late by 1 day and 69 days on two previous occasions. But the fact remains that when the convict was released on furlough on 29/10/2013, he reported back to the prison within the stipulated time.

11 It is required to be noted that there is nothing on record to indicate that the conduct of the convict in prison is not satisfactory. It is informed that the convict is behind the bar for the period of 11 years and 10 months approximately, including remission period he has undergone 15 years and 2 months sentence.

12 Rules 4(10) and 4(20) of the Prisons (Bombay Furlough and Parole) Rules, 1959 which form the basis of rejection of the application filed by the convict read thus :-

“4 Eligibility for furlough :-

All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible

for furlough :-

(1) to (09)

(10) Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough;

(11) to (19)

(20) who in the opinion of police/prison authorities are likely to jump furlough;

(21)"

13 As already observed in forgoing paragraphs, the Petitioner has been sufficiently punished for his over stay outside the jail, when he was released on parole by removing his name from the remission register.

14 We have taken into consideration the fact that the convict has already undergone substantial part of life imprisonment which is more than 10 years. For the reasons recorded in the foregoing paragraphs and keeping in view pandemic situation, we are of the considered view that the Petitioner's brother in law i.e. convict Amol S/o Dada Hivrale deserves to be released on Covide-19 Emergency Parole. Hence the following order.

ORDER

- 1 The Writ Petition is allowed in terms of prayer clause (B).
- 2 The Petitioner's brother in law namely Amol S/o Dada Hivrale, Convict-No.16014, Central Jail Yerwada, Pune, shall be released on Covid-19 Emergency Parole subject to fulfillment of usual terms and conditions
- 3 Subject to obtaining appropriate undertaking and sureties from the convict and on such terms and conditions as the Respondent deem fit and proper, the Respondent shall release the convict Amol S/o Dada Hivrale to avail of the parole leave within a period of two weeks from today.
- 4 Rule made absolute in above terms.
- 5 The Writ Petition is accordingly disposed of.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]