

JPP

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

CRIMINAL WRIT PETITION NO. 4385 OF 2021

Om narayan Amarnath Sharma

... Petitioner

V/s.

The State of Maharashtra

... Respondent

Ms. M.H. Mhatre, APP for the Respondent - State

***CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, JJ.***

DATE : 18 NOVEMBER 2021

P.C. :-

This Petition is filed through Jail. Heard learned APP.

2. Normally we would have proceeded to appoint an Advocate for the Petitioner through the Legal Aid and then proceeded with the matter. However, in the group of identical matters listed today, we have consistently taken a view that the ground given in the impugned order is not sustainable and have

remanded the cases for fresh consideration. We have, therefore, considered the case further.

3. The Petitioner's application for emergency parole is rejected on the ground that he has not been granted parole or furlough earlier. This ground is being held to be not legal and valid in series of decisions which are referred to in the order passed by the Division Bench of this Court dated 28 October 2021 in Writ Petition No.2115 of 2021 (*Roshal Ali Din Mohmed Mukhiya Shaikh v. State of Maharashtra*) and connected matter. The order reads thus :-

“These three Petitions have been filed through jail seeking emergency (Covid) parole. By the orders impugned in these Petitions the prayers of the Petitioners have been rejected. The ground given for rejection which is common in all Petitions hence they are taken up for disposal. The impugned orders refer to Notification under the Prisoners Act amending the Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment), Rules 2020, wherein in sub-rule (1) of rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, is amended to include clause (ii) in respect of grant of emergency parole. The added clause (ii) states that the convicted persons whose maximum sentence is about 7 years, shall be considered for release of emergency parole, if the convict has returned to prison on time for last two releases whether on parole or furlough. Pursuant to this stipulation in the impugned order, the superintendent of the concerned

jail has rejected the application of the Petitioners on that ground that in the case of the Petitioners the eventuality of return to the prison on last two occasion has not arisen because they have been never granted furlough or parole.

2. The Division Bench of this Court (Aurangabad Bench) in the case of Kavita Dilip Baviskar Vs. The State of Maharashtra¹ rendered on 30 June 2020 has observed that such a condition cannot be imposed in law and had set aside the orders and had directed the authorities to give benefit of notification dated 8 May 2020 and the amendment to the Petitioners. This decision is subsequently followed in the case of Gangadhar Ananda Kokate Vs. The State of Maharashtra² dated 4 August 2020 of Division Bench of High Court at Aurangabad.

3. In these three cases the Petitioners have been directed to undergo sentence above seven years. Therefore first criteria is satisfied. As regard the condition of having not released on furlough and parole earlier, it has already been held to be bad in law by this Court. No contrary decision is shown. In the impugned order no other condition has been imposed. There is no reason therefore why benefit of the law already laid down by this Court should not be extended to the Petitioners.

4. Accordingly we allow these three Petitions. The impugned orders are set aside and the Respondent authorities are directed to take a decision in respect of Petitioners' Petitions for emergency (Covid) parole, in light of the rules as amended referred to above, without reference to the condition of having not been released on parole or furlough before. The decision be taken within

¹ Cri.WP No.571 of 2020

² Cri.WP.No.761 of 2020

period of two weeks from today. Writ Petitions are disposed of accordingly.”

4. In the light of the above observation and the fact that the present case falls within the ambit of the above decision, we set aside the impugned order and direct the Respondent -Authorities to take a decision in respect of the Petitioner’s application for Emergency (Covid-19) Parole within a period of four weeks and inform the Petitioner accordingly.

5. The Writ Petition is accordingly disposed of.

SARANG V. KOTWAL, J.

NITIN JAMDAR, J.

**JYOTI
PRAKASH
PAWAR**

Digitally signed
by JYOTI
PRAKASH
PAWAR
Date: 2021.11.25
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