

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2674 OF 2021

Devendra Ajit Gambhir	...Petitioner
vs.	
The State of Maharashtra (Through Superintendent, Central Prison, Nasik Road)	...Respondent

Mr. Rupesh Jaiswal, for the Petitioner.
Mr. V.B. Konde-Deshmukh, APP for the Respondent-State.

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

JUDGMENT RESERVED ON : 11th AUGUST, 2021
JUDGMENT PRONOUNCED ON : 23rd AUGUST, 2021

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

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

2. By virtue of this petition under Article 226 of the Constitution of India, the petitioner who is the brother of Mayuresh Ajit Gambhir (the convict) has prayed for quashing and setting aside the order dated 1st July, 2021 passed by the Superintendent, Central Prison, Nasik Road whereby the prayer of the convict to release him on emergency Covid 19 parole came

to be rejected, and for a direction to release the convict on emergency parole.

3. The background facts can be stated in brief as under:

- a] By judgment and order dated 25th February, 2016 Mayuresh Ajit Gambhir came to be convicted for the offence punishable under section 302 of the Indian Penal Code, 1860 (the Penal Code) and sentenced to suffer imprisonment for life. The convict has undergone 6 years of actual imprisonment. In the wake of the situation which arose on account of Covid 19 pandemic, the convict made an application on 1st June, 2021 seeking release on emergency parole under Rule 19(1)(c)(ii) of the Prisons (Bombay Furlough and Parole) Rule, 1959 (the Rules, 1959) introduced by notification dated 8th May, 2020.
- b] By the impugned order, the Superintendent, Prison was persuaded to reject the application of the convict on the ground that the earlier request made by the convict to release him on furlough came to be rejected by the competent authority invoking Rule 4(4) and (8) of the Rules, 1959 and the Writ Petition preferred by the convict bearing Writ Petition (St.) No. 3208 of 2020 thereagainst also came to be dismissed by this

Court by the judgment and order dated 5th January, 2021. It was further noted that the petitioner has been convicted in three different cases and prosecutions were also pending against the petitioner. Thus, there was a strong possibility of jumping the parole and committing the offences leading to breach of public peace and tranquility. Being aggrieved, the convict has invoked the writ jurisdiction through the petitioner.

4. We have heard Mr. Jaiswal, the learned counsel for the petitioner and Mr. Konde-Deshmukh, learned APP for the State.

5. We have also perused the material on record including the report dated 30th July, 2021 tendered by the Superintendent, Prison, Nasik to which a chart indicating the details of incarceration of the convict is annexed. Mr. Jaiswal submitted that the impugned order reveals that the fact that the convict was never released on furlough or parole even once in the past, weighed with the respondent. Denial of the emergency parole on the said count is wholly unsustainable, urged Mr. Jaiswal. In order to lend support to this submission, Mr. Jaiswal invited our attention to the orders passed by this Court in Writ Petition No.

760 of 2020 (Rajendra Shivaji Avhad vs. State of Maharashtra) dated 4th August, 2020 and Writ Petition No.ASDB-LD-VC 265 of 2020 (Kalyan Bansidharrao Renge vs. State of Maharashtra) dated 28th August, 2020.

6. It is true that this Court has taken a consistent view that the fact that the convict was not earlier released on furlough or parole, would not be an impediment in the release of the convict on emergency parole under Rule 19(1)(c) of the Rules, 1959. However, the aforesaid proposition does not advance the casue of the submission on behalf of the convict. In the case at hand, from a proper construction of the impugned order, it becomes explicitly clear that though the competent authority referred to non release of the convict on the furlough or parole in the past as a historical fact, yet the prayer was not negated on the said count.

7. In fact, the substantive reason for denial of the benefit of the emergency parole, was the fact that the request of the convict to release him on furlough was rejected by the authorities in the backdrop of the antecedents of the convict, as

reflected the cases in which he has been convicted and were pending, and the said rejection was upheld by this Court in Writ Petition (St.) No. 3208 of 2020 dated 5th January, 2021. It was thus inferred that the release of the petitioner on emergency parole was not advisable as there was a strong possibility of jumping the parole and committing offences leading to breach of peace and tranquility.

8. Mr. Jaiswal would submit that in one of the three cases, in which the convict was convicted by learned Chief Judicial Magistrate (RCC No.58 of 2009), by judgment and order dated 12th February, 2020, the learned Additional Sessions Judge, Alibag, Raigad partly allowed the Criminal Appeal No. 16 of 2010, altered the conviction from the offence punishable under section 325 of Indian Penal Code to section 323 and reduced the sentence.

9. Further, the apprehension on the part of the authorities was sought to be met by filing the affidavit of persons who professed to control the activities of the convict in the event he is released on emergency parole.

10. Per contra, Mr. Konde-Deshmukh, learned APP supported the impugned order. It was urged that the conduct and antecedents of the convict, as emerged from the cases in which the convict has been convicted and still faces the prosecution, dis-entitle the convict from the relief of emergency parole. Since this Court declined to interfere with the order of rejection of furlough, there is no justifiable ground to take a different view of the matter for emergency parole, urged Mr. Konde-Deshmukh.

11. We have given our anxious consideration to the rival submissions. Ordinarily, when the case of a prisoner falls within the ambit of Rule 19(1)(c)(ii) the rejection of the prayer for emergency parole is not countenanced. The refusal of the benefit of the amended provision is considered to run counter to the object sought to be achieved by introducing the said provision for emergency Covid 19 parole, namely arrest the spread of the contagion by de-congesting the prisons. However, where in a particular case the conduct and antecedents of the convict are such that the release on emergency parole would be counter productive, the fact that the particular convict satisfies the requirement of the amended Rule is not by itself sufficient.

12. In the case at hand, it is imperative to note that the rejection of the furlough to the convict by the competent authorities was found justifiable, in the light of the character sketch of the convict as emerged from the record. The following observations of this Court in the judgment dated 5th January, 2021 in Writ Petition (St.) No. 3208 o 2020 (Coram: S.S. Shinde & M.S. Karnik, JJ.) deserve extraction:

9] However, we find that following criminal cases pending against the petitioner as per the report submitted by learned APP :

I) C.R.No.33/13 registered with Poinad Police Station Case No.25/15 under Sections 143, 147, 451, 454, 504, 526 of the IPC, C.J.M. Court, Raigad, Alibaug (Production Warrant).

II) C.R.No.86/13 registered with Poinad Police Station under Sections 3(i)(ii), 3(2) of MCOC Act, 1994 and under Section 3(2) of the Arms Act, Addl. Sessions Court, Special MCOC Court, Raigad – Alibaug (Remand Warrant).

III) P.W. Alibaug Police Station C.R.No.37/14, Sessions Case No.638/15, C.J.M. Court, Raigad, Alibaug (Production Warrant). IV) P.W. Alibaug Police Station C.R.No.04/09, Sessions Case No.58/09, C.J.M. Court, Raigad, Alibaug (Production Warrant).

10] From the record it is further seen that even when the petitioner was granted re-entry in the year 2013 for a period of 8 days in the Raigad District pursuant to the order passed by this Court while the petitioner was under an order of externment, an offence came to be registered against him under Section 143, 147, 148, 149, 307, 395, 452, 436, 427, 504, 506 of the IPC read with Section 3(1), 25 of the

Arms Act on the allegation that the Petitioner alongwith other co-accused attempted to murder one Vijendra Ramesh Tavade by attacking him and setting his house on fire.

11] As per the report, there are three criminal cases registered against the petitioner at Poinad Police Station, two criminal cases registered at Alibaug Police Station, one criminal case registered at Mandva Police Station, one case registered at Vikhroli Police Station at Mumbai. In all there are 7 offences registered against the petitioner.

12] We have gone through the decision relied upon by learned counsel for the petitioner in the case of Anil Dhondiba Mane (supra). The said decision is not applicable in the facts of the present case. In the facts of the present case the adverse police report clearly reveals the provisions under which the crime has been registered against the petitioner in different police stations. The Petitioner is alleged to have committed an offence even during the period he was granted an indulgence of eight days re- entry by this Court when an externment order against him was in force. This is a circumstance which is not possible for us to overlook in the exercise of our jurisdiction under Article 226 of the Constitution of India.

13] The petitioner has undergone actual imprisonment of over 5 years and 1 month. Considering these materials, in our opinion, we do not find any merit in the submission of learned counsel for the petitioner so as to interfere with the order passed by the competent authority and the appellate authority refusing to release the petitioner on furlough. The Writ Petition, therefore, deserves to be rejected and accordingly, the same is rejected.

13. The aforesaid observations, in our view, bear upon the prayer of the convict for release on emergency parole as well. The reasons which weighed with the competent authority in

negating the prayer of the convict for release, in the backdrop of the cases against the convict, can not be said to be unsustainable. The apprehension expressed by the competent authority appears to be well founded, if viewed in the backdrop of those cases. Resultantly, the competent authority was within its right in taking into account that the rejection of prayer for release on furlough as upheld by this Court in Writ Petition (St.) No. 3208 of 2020, since those reasons still hold the ground.

14. Even otherwise, from the report of the Superintendent, Prisons, it appears that the situation which arose on account of Covid 19 pandemic has eased of to some degree. At this juncture, there does not seem to be a pressing and emergent situation which would warrant the exercise of discretion in favour of the convict, notwithstanding the antecedents of the convict and the apprehension expressed by the competent authority.

15. For the foregoing reasons, we do not find that the impugned order warrants interference. Resultantly, the petition deserves to be dismissed. Hence, the following order.

ORDER

- a] The petition stands dismissed.
- b] Rule is discharged.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)