

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.979 OF 2021

Rajan @ Balu Shankar Nair : Petitioner.
Versus
The State of Maharashtra : Respondent.

Ms. Gauri S Velankar, appointed advocate for the Petitioner.
Mr. Deepak Thakre, PP a/w Dr. F R Shaikh, APP for the Respondent/State.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ
Reserved on : 29th APRIL 2021
Pronounced on : 04th May 2021

JUDGMENT (PER S. S. SHINDE, J)

1 Rule. Rule is made returnable forthwith and with the consent of the learned counsel appearing for the parties heard finally.

2 The Petitioner has filed this Petition for grant of emergency Covid-19 parole. The Petitioner (Convict No.C/9244) has been convicted by the Additional Sessions Judge, Mangaon on 01/01/2014 in Sessions Case No.43/2008 for the offence punishable under Section 302 and 201 of the Indian Penal Code, and sentenced to suffer imprisonment for life and to pay fine of Rs.18000/- in default sentence to suffer imprisonment for 5 years.

3 The application of the Petitioner for grant of emergency Covid-19 parole has been rejected by the Respondent- Authority vide order dated 28/09/2020 on the ground that the Petitioner was never released on

parole/furlough till date, and in view of the Government Notification dated 08/05/2020 the Petitioner was not entitled to be released on emergency parole.

4 Heard the learned advocate appointed for the Petitioner and the learned PP appearing for the Respondent/State.

5 Learned counsel appearing for the Petitioner submits that the petitioner has undergone 13 years 07 months 12 days imprisonment and he is lodged in the Nashik Road Central prison. It is submitted that the application of the petitioner to release him on emergency (Covid-19) parole was rejected on the ground that the Petitioner herein was never released on parole/furlough, till date. Therefore, learned counsel appearing for the Petitioner submits that, merely because the Petitioner was never released earlier is no ground to reject his application for emergency (Covid-19) parole.

6 Learned PP appearing for Respondent-State submits that the prayer of the petitioner to release him on emergency (Covid-19) parole has rightly been turned down, relying upon the notification dated 8th May 2020 issued by the Government of Maharashtra, Home Department. It is submitted that the requisite official capacity to accommodate the convicts in Nashik Central Prison is 3178 inmates. By end of March 2021, there were 2364

convicts (68- women convicts and 2243 men convicts). It is submitted that in the Nashik Central Prison 807 more convicts can be accommodated. In order to prevent spread of Covid-19 virus, inmates/convicts who have been recently lodged in the said prison are kept in isolation in separate hall and after necessary health checkup and tests, they are kept in the separate room in the prison. There is thermal scanning and rapid antigen tests are conducted on regular basis. In case, anybody is tested positive one separate isolation room No. 8 is maintained for their stay and treatment.

7 We have given careful consideration to the submissions of the learned PP appearing for the Respondent – State. With the able assistance of the learned PP appearing for the State, we have perused the pleadings and grounds in the petition, annexures thereto, impugned order / letter of understanding and also the report received from the Superintendent of Nashik Road Central Prison, Nashik.

8 Upon a careful perusal of the said report received from the prison authority, it appears that proper care is being taken of the convicts in the prison so as to avoid possibility of contracting Covid–19 virus. In the said report, it is stated that the Petitioner was never released on furlough/parole till date. The Superintendent, Nashik Road Central Prison, Nashik, has expressed an apprehension that in case the petitioner is released on parole, he may

abscond and may not come back to the jail. The ground for rejection of the application Petitioner that the Petitioner was never released on furlough/parole till date and the Petitioner having not fulfilled the condition of two releases on furlough and parole for making him eligible to avail the benefit of Notification dated 08.05.2020 for emergency Covid-19 parole finds place in the said report.

9 As stated herein above, the application made by the Petitioner was rejected only on the ground that the Petitioner was never released on furlough or parole till date, and therefore he does not fulfill the condition of last two releases and surrendering on time in terms of Government Notification dated 08/05/2020.

10 The Government Notification dated 08.05.2020 which forms the basis of rejection of the Petitioner's application reads thus :-

“2(c)(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 releases (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 ever 30 days.”

11 The issue as to whether the convict, whose maximum sentence is above 7 years imprisonment, is entitled for the emergency parole irrespective of whether he was released only once on parole in past, has been considered by the Division Bench at Aurangabad of this Court in the unreported judgment dated 30/06/2020 in Criminal Writ Petition No.571 of 2020 in the case of Kavita w/o Dilip Baviskar v/s The State of Maharashtra (Coram : T V Nalawade & Shrikant D Kulkarni,JJ). In the said case this Court has held that the said condition i.e. whether the convict was released on one occasion or twice on parole in past and reported back in time, had been introduced with an intention to see that the convict shall return to jail in case he is released on emergency parole. It is further held in the said case that though the Petitioner therein had released only once on parole in the past, he was entitled to be released on emergency parole.

12 In our opinion, merely because the petitioner was never released on furlough/parole till date cannot be a ground for rejecting the application of the petitioner for emergency parole. This Court in Criminal Writ Petition-ASDB-LD-VC No. 65 of 2020 (Milind Ashok Patil & Ors. Vs. State of Maharashtra &

Ors.) had occasion to consider similar issue and a view is taken in the said case that merely because the petitioner was not released twice in the past on parole/furlough cannot be a ground for rejecting the application for emergency parole.

13 The learned PP appearing for the Respondent/State on instructions submits that the Petitioner is tested Covid-19 positive on 26/04/2021, and he is being given treatment in the jail hospital.

14 In our opinion the impugned order is unsustainable, in view of the decision rendered by this Court in Kavita Baviskar's case (supra) and Milind Ashok Patil's case (supra). Since the Petitioner was never released on furlough/parole till date, his application for emergency parole has been rejected. There is no other reason stated in the impugned order for rejecting the prayer of the Petitioner to release him on emergency parole. The application for emergency parole made by the Petitioner could not have been rejected by the Respondent Authority on the ground mentioned in the impugned order.

15 In view of the fact that the Petitioner is tested Covid-19 Positive and he is taking treatment in the jail hospital, if, he is released immediately, he may face problem of bed, ventilator etc. Hence we pass the following order :-

:ORDER:

1] The Writ Petition is allowed. The impugned order dated 28/09/2020 passed by the Respondent-Authority is quashed and set aside.

2] The Petitioner is entitled to be released on emergency Covid-19 parole in terms of the Notification dated 08.05.2020 subject to the Respondent -Authority imposing such conditions which would ensure that the Petitioner will surrender in time upon expiry of the emergency parole period.

3] After completing treatment of Covid-19 from jail hospital, the Respondent-Authority is directed to release the Petitioner subject to his willingness and fulfilling the conditions enumerated in the relevant Rules/Procedure as expeditiously as possible after getting Covid-19 Negative Test Report of the Petitioner.

4] Needless to mention that the Petitioner shall not misuse the liberty of his release on emergency Covid-19 parole and strictly abide by the terms and conditions imposed by the Respondent-Authority.

5] Rule is made absolute to above extent. The writ petition stands disposed of accordingly.

6] We appreciate the able assistance rendered by Advocate Ms. Gauri Velankar, appointed for representing the petitioner. We quantify her fees at Rs. 5000/- to be paid by High Court Legal Services Committee, Mumbai, within four weeks from the receipt of copy of this order.

[MANISH PITALE, J]

[S. S. SHINDE , J]