

JPP

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

CRIMINAL WRIT PETITION NO. 2261 OF 2021

Kakdya Yamarya Pawara

... Petitioner

V/s.

The State of Maharashtra

... Respondent

Ms. Gauri Velankar, Advocate appointed through Legal Aid for the
Petitioner

Ms. A.S. Pai, P.P. for the Respondent - State

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

DATE : 18 NOVEMBER 2021

P.C. :-

Letter by the Petitioner is converted into this Writ
Petition. The Petitioner has sought Emergency (Covid-19) Parole.
The prayer of the Petitioner was rejected by the impugned order.

2. By the impugned order, the Respondent–
Superintendent has rejected the application for emergency parole on
two grounds. First, that the Petitioner has never been granted parole
or furlough before. Secondly, reference is made to Rule 19(1)(C) as

amended of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 wherein a convict who is a citizen of other country or other than the State of Maharashtra is not entitled to be released on emergency parole.

3. As far as the first ground is concerned of not have been granted furlough or parole earlier, this issue is now settled by two decisions of this Court (Aurangabad Bench) in the cases of *Kavita Dilip Baviskar vs. The State of Maharashtra*¹ and *Gangadhar Ananda Kokate vs. The State of Maharashtra*² and in the order dated 28 October 2021 in Writ Petition No. 2115 of 2021 and Ors. It is held that such condition cannot be imposed. Therefore, the first condition in the impugned order is quashed and set aside. As far as the second condition in the impugned order is concerned, it only refers to a Rule. There is no reference to a factual situation whether the Rule is attracted.

4. The learned Public Prosecutor has placed on record the subsequent order passed on 5 August 2021 rejecting the application for emergency parole. In this order again two grounds are given. The first ground is that the Petitioner has never been released on parole or furlough earlier. This ground cannot be sustained as held above. The second ground is that there is a Criminal Case No.81 of 2003 pending before the Magistrate, First Class, Sendhva, District –

1 Cri.WP. 571/2020 dtd. 30 June 2020

2 Cri.WP. 761/2020 dtd. 4 August 2020

Madhya Pradesh. What is the consequence of pendency of this case in another State with reference to the statutory Rule is not stated . Neither it is stated in the order dated 5 August 2021 that the Petitioner is the resident of Madhya Pradesh. Therefore, on this ground the order is non-speaking.

5. Therefore, both the orders cannot be sustained. The Respondent– Superintendent will accordingly take a fresh decision on the application of the Petitioner within a period of four weeks and communicate the Petitioner the decision. We make it clear that the ground that the Petitioner has not been availed the parole or furlough leave earlier is not available to the Respondent– authority.

6. The Writ Petition is disposed of in above terms.

SARANG V. KOTWAL, J.

NITIN JAMDAR, J.

**JYOTI
PRAKASH
PAWAR**

Digitally signed by
JYOTI PRAKASH
PAWAR
Date: 2021.11.24
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