

JPP

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

CRIMINAL WRIT PETITION NO. 2266 OF 2021

Baburao Nimbaji Yesankar

... Petitioner

V/s.

The State of Maharashtra

... Respondent

Ms. Priyanka Chavan, Advocate appointed through Legal Aid for the
Petitioner

Mr. J.P. Yagnik, APP for the Respondent - State

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

DATE : 18 NOVEMBER 2021

P.C. :-

Heard the learned Counsel for the parties.

2. The Petitioner is seeking Emergency (Covid-19) Parole. By the impugned order dated 28 September 2020 passed by the Respondent – Superintendent of Jail, the Petitioner's request has been rejected. A ground given in the impugned order is that the Petitioner since was not released on parole or furlough earlier. He is not entitled to be released on emergency (Covid-19) parole. This

issue is no longer *res integra*. In the group of matters the Division Bench of this Court in the case of *Roshan Ali Din Mohmed Mukhiya Shaikh v. State of Maharashtra*¹, held as under :-

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 Maharashtra*² 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

1 Cri. W.P. No. 2115 of 2021 & Ors. dtd 28.10.2021

2 Cri.WP No.571 of 2020

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 Maharashtra³ 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 period of two weeks from today. Writ Petitions are disposed of accordingly."

3. In the light of the above quoted observations which clearly applied to the facts of the present case, the impugned order is quashed and set aside. The Respondent will take a fresh decision on the application filed by the Petitioner seeking Emergency (Covid-19) Parole in the light of the statutory provisions within a period of four

3 Cri.WP.No.761 of 2020

weeks and communicate the decision to the Petitioner. It is clarified that the ground which we have set aside in this order shall not be available to the Respondent.

SARANG V. KOTWAL, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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by JYOTI
PRAKASH
PAWAR
Date: 2021.11.24
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