

JPP

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

CRIMINAL WRIT PETITION NO. 2917 OF 2021

Prakashsingh M. Gadia

... Petitioner

V/s.

The State of Maharashtra

... Respondent

Mr. Ashok Pandire, 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. :-

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 earlier. Second, in the light of 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 decision of the Division Bench of this Court in the case of *Roshan Ali Din Mohmed Mukhiya Shaikh vs. State of Maharashtra*³. 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 and there is no reference to a factual situation that the Petitioner is either the citizen of another country or resident of the State other than Maharashtra. Thus, on this ground the order is non-speaking.

4. The impugned order therefore cannot be sustained and is accordingly set aside. The Respondent– Superintendent will accordingly take a fresh decision on the application of the Petitioner within a period of four weeks and inform the Petitioner accordingly.

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

SARANG V. KOTWAL, J.

NITIN JAMDAR, J.

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

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

3 Cri.WP. 2115/2021 dtd. 28 October 2021