

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.163 OF 2021

Rajesh Shyam Narayan Mishra,]
 Residing at Dihava, Post Tarwa, Tal.]
 Lalganj, Dist. Azamgad.]
 (Presently lodged in Nashik Road]
 Central Prison).] ... Petitioner

Versus

The State of Maharashtra]
 Through the Superintendent of Jail,]
 (Nashik Road Central Prison, Jail]
 Road, Nashik – 422 101.)] ... Respondents

...

Mr. Bharat K. Manghani for the petitioner.

Mr. K.V. Saste, A.P.P. for the respondent-State.

...

CORAM : S.S. SHINDE &
MANISH PITALE, JJ.

RESERVED ON : 25TH JANUARY, 2021

PRONOUNCED ON : 29TH JANUARY, 2021.

JUDGMENT:- [Per: Manish Pitale, J.]

1. Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.
2. The petitioner has approached this court seeking to challenge order dated 19/09/2020 passed by the respondent, whereby his application for grant of Emergency Covid Parole leave stood rejected.
3. The petitioner was arrested on 05/02/2009 in connection with FIR registered against him for offences punishable under Section 302 of the Indian Penal Code. By a judgment and order dated 15/12/2020, the petitioner stood convicted and he was sentenced to suffer life imprisonment. The appeal filed by the petitioner before this court stood dismissed on 30/01/2015. Since the said judgment of this court is not challenged further, the conviction and sentence imposed on the petitioner, has attained finality.
4. It is stated in the petition that the petitioner never availed parole or furlough leave, although he had already undergone sentence for more than 11 years. It is, in this backdrop, that on 06/09/2020, the petitioner preferred the aforesaid application for grant of Emergency Covid Parole leave in view of the Notification

issued by the respondent in the backdrop of the Covid 19 crisis. The petitioner claims that he was entitled to grant of such Emergency Parole.

5. By order dated 19/09/2020, the respondent rejected the application of the petitioner on two grounds. Firstly, on the ground that the petitioner was not granted furlough or parole leave even once and secondly, on the ground that the parole leave could not be granted to a convict, who was a resident of a place outside the State of Maharashtra.

6. Mr. Manghani, learned counsel appearing for the petitioner has submitted that both the grounds stated in the impugned order are unsustainable for the reason that the petitioner not having availed furlough or parole leave even once earlier, cannot be a ground for rejection of Emergency Covid Parole. It is submitted that since the petitioner was never granted such furlough or parole leave, there was no question of the petitioner not having returned on grant of such leave. Therefore, it is submitted that the first ground is wholly unsustainable.

7. As regards the second ground, learned counsel for the petitioner has submitted that the subsequent developments demonstrated that the ground on which the Emergency Covid Parole leave of the petitioner was rejected, no longer exists.

Attention of this court is invited to Notification dated 13/11/2020 issued by the respondent wherein the words “and prisoners having their place of residence out of the State of Maharashtra” have been deleted from Rule 19 of the Prisons (Bombay Furlough and Parole) Rules, 1959 (“**the said Rules**”). On this basis, it was submitted that the impugned order deserved to be set aside.

8. Additionally, it was brought to the notice of this court that brother of the petitioner is a resident of Mumbai and he has filed an affidavit stating that he would accommodate his brother i.e. the petitioner herein, at his house in Vile Parle, Mumbai, and that he would ensure that the petitioner abides by the terms and conditions that may be imposed by this court.

9. Mr. Saste, learned A.P.P. appeared on behalf of the respondent and submitted that the correctness or otherwise of the impugned order could not be tested on the Notification that was issued subsequent to the impugned order. It was submitted that therefore, no error could be attributed to the respondent in rejecting the application filed by the petitioner.

10. Having heard learned counsel appearing for the rival parties, the Notification dated 13/11/2020 placed on record of this court clearly demonstrates that the very basis of the second

ground for rejection of application of the petitioner no longer exists. The relevant words in Rule 19 of the said Rules have been deleted, thereby indicating that even if the petitioner was a resident of a place outside the State of Maharashtra, the application for grant of parole could not be rejected only on that ground. Even if the Notification dated 13/11/2020 has been admittedly issued after passing of the impugned order, we are of the opinion that the petitioner is entitled to the benefit of the same. Thus, we hold that the second ground on which the petitioner's application stood rejected is rendered unsustainable.

11. Insofar as the first ground is concerned, there appears to be no logic in the reason given by the respondent that merely because the petitioner was not, at any time earlier, released on furlough or parole leave, his application could not be granted for Emergency Covid Parole leave. The fact that earlier no such leave was granted to the petitioner cannot be a ground for rejecting the application of the petitioner. There are no other reasons mentioned in the impugned order to indicate that grant of Emergency Covid Parole to the petitioner would be a risk. It is also on record that the brother of the petitioner is indeed a resident of Mumbai and he has filed an affidavit stating that he would ensure that the petitioner resides with him and that the petitioner would abide by the terms and conditions that may be imposed by this court. The affidavit of the brother of the

petitioner along with copies of Aadhar card, Voter ID card and Income-tax Returns is placed on record.

12. In view of the above material, we are satisfied that the petitioner deserves to be granted relief in the present writ petition. Hence the following order:

:ORDER:

- (a) The writ petition is allowed.
- (b) The impugned order is set aside.
- (c) The application filed by the petitioner is allowed to the extent that the petitioner is directed to be released for a period of 45 days on Emergency Covid Parole. The petitioner shall abide by the conditions specified in the said Rules of 1959 by submitting necessary documents like surety, bond, etc.
- (d) The petitioner shall reside with his brother at the address given in the affidavit submitted by his brother before this court. The petitioner and his brother would be held responsible in case there is any breach of condition/conditions.

- (e) The petitioner shall report to the Vile Parle Police Station, Mumbai, once in 30 days.
- (f) The petitioner shall not enter in the jurisdiction of the Bangur Nagar Police Station where the offence was registered against him and where the relatives of the victim and witnesses reside.
- (g) The petitioner shall surrender upon completion of aforesaid period of parole leave.

12. Rule made absolute in the above terms.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)