

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

CRIMINAL WRIT PETITION NO.750 OF 2021

Inden @ Mohiddin Sayyed Ali Shaikh ... Petitioner

Vs.

1. State of Maharashtra
2. The Superintendent of Jail,
Yerwada Open Prison ... Respondents

Mr.Aniket Vagal for the Petitioner

Ms.Sangeeta Shinde, APP, for Respondent – State

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

**JUDGMENT RESERVED ON: APRIL 22, 2021
JUDGMENT DELIVERED ON: APRIL 29, 2021**

JUDGMENT (PER S.S. SHINDE, J.):

1. This petition is filed seeking a direction to Respondent No.2 to include the period of emergency parole in the period of sentence, while calculating the period for premature release under section 432 of the Code of Criminal Procedure.
2. It is the submission of the learned Counsel appearing for the petitioner that the petitioner was arrested on 8th November, 2002

for the offences punishable under sections 120B, 147, 148, 452, 504, 506, 302 read with section 149 of the Indian Penal Code and was sentenced to suffer R.I. for life. Being aggrieved by the order passed by the trial Court, the petitioner filed appeal before the High Court. However, in the year 2011, the said appeal was dismissed, thereby confirming the sentence of R.I. for life.

3. The petitioner filed an application for premature release before the Department of Home, Government of Maharashtra. By letter dated 22nd February, 2018, it was communicated to the petitioner that he has to undergo 26 years in prison including remission. It is submitted that the petitioner was supposed to complete the period of 26 years in the month of November, 2020 but due to spread of Covid – 19 virus, pursuant to the Government Notification dated 8th May, 2020, the petitioner was released on emergency parole in the month of June, 2020. It is the case of the petitioner that only 5 months period of sentence was left when the petitioner was released on emergency parole and, therefore, the petitioner requested respondent No.2 to include the period for which emergency parole was granted to the petitioner while calculating the number of years for premature release. It is

submitted that the petitioner has spent 25 years including remission in jail and, therefore, respondent No.2 may be directed to include the period of emergency parole in the period of sentence.

4. Pursuant to the notices issued to the respondents, one Mrs.Swati K. Jogdand, Incharge Superintendent, Yerwada Open Central Prison, Group-1, Pune, District Pune, has filed an affidavit in reply. It is stated in para 6 of the said affidavit that the petitioner has filed the application for premature release under section 432 of the Code of Criminal Procedure before the Home Department, Government of Maharashtra, Mumbai. The Under Secretary, Home Department, Mantralaya, Mumbai vide its letter dated 22nd February, 2018 addressed to the Superintendent, Yerwada Central Prison, Pune, informed that the petitioner is categorised under 4(e) of the Guidelines for premature release issued by the Government of Maharashtra vide notification dated 15th March, 2010 and accordingly, the petitioner is required to undergo sentence for 26 years in the prison including remission.

It is stated that due to Covid 19 pandemic situation, the State Government issued the notification dated 8th May,

2020 and pursuant to the said notification dated 8th May, 2020, the petitioner was released on emergency parole leave on 10th May, 2020 for 45 days. On completion of 45 days' period, the petitioner was granted 30 days leave by extension on 9 occasions from time to time. It is the contention of the petitioner that his 26 years period came to an end in the month of November, 2020. Further, as per the record maintained by the Department, the petitioner's sentence including remission would come to an end on 15th July, 2022.

5. Reliance is placed on Rule 20 of the Prisons (Bombay Furlough and Parole) Rules, 1959 and it is stated that parole is not an incentive and thus, shall not be counted towards remission of the sentence. It is also stated in the reply that the petitioner was supposed to report once in 30 days to the Ambernath Police Station as per the conditions mentioned in the order of his release on emergency Covid parole. However, in the last four months prior to filing the additional affidavit, the petitioner did not report to the said police station. The petitioner joined one political party publicly, as a result of which the social and political atmosphere in

the Ambernath area became tense. The said action of the petitioner was in close proximity of ensuing elections in the Ambernath Municipal Council. Therefore, the petitioner's stay in Ambernath may give rise to his participation in criminal activities and the same will create law and order problem in the said area. In support of the aforesaid contention, reliance is placed on Rule 4 sub-rules (11) and (19) of Government Notification dated 8th February, 2020. Rule 19 sub-rule (1) of clause (c) of the Prisons (Bombay Furlough and Parole) Rules 2020 (for short, hereinafter referred to as 'the said Rules') states that the convicted prisoner shall report to the concerned Police Station, within whose jurisdiction they are residing, once every 30 days. The said aspect was communicated to the petitioner through Ambernath Police Station by office letter dated 10th March, 2021 and the petitioner was directed to surrender to the Yerwada Prison on 1st April, 2021.

6. We have given a careful consideration to the arguments advanced by the learned Counsel appearing for the petitioner and the learned APP appearing for the Respondents. With their able assistance, perused the pleadings and grounds taken in the petition, the annexures thereto and reply filed by Mrs.Swati K.

Jogdand, the Incharge Superintendent of Yerwada Open Central Prison, Group-1, Pune, District Pune. In the present petition, the only prayer is seeking direction to respondent No.2 to include the period of emergency parole in the period of sentence of the petitioner.

7. In order to appreciate the contention and prayer in the petition, it would be apt to reproduce hereinbelow Rule 20 of the said Rules which reads as under:

“20. Parole not to be counted as remission of sentence.

Parole is not an incentive and thus shall not be counted towards the remission of the sentence.”

8. In view of Rule 20 of the said Rules, the prayer of the petitioner cannot be granted and hence, the petition stands rejected.

9. Insofar as the action initiated against the petitioner asking him to surrender to the jail authorities for breach of the conditions i.e., not reporting to the police station on the last four occasions before filing the additional affidavit is concerned, this Court has not expressed any opinion and in that respect, there is no prayer by the petitioner before this court. Hence, the respondent –

authorities are at liberty to take appropriate decision and action in that respect in accordance with law.

10. With the above observations, Writ Petition stands disposed off accordingly.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)