

JPP

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

CRIMINAL WRIT PETITION NO. 5770 OF 2021

Rajesh Sangamlal Jaiswal

... Petitioner

V/s.

The State of Maharashtra and Anr.

... Respondents

Mr. M.P. Mishra for the Petitioner

Ms. M.H. Mhatre, APP for the Respondent – State

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

DATE : 16 DECEMBER 2021

P.C. :-

Heard the learned Counsel for the Petitioner and the learned APP.

2. The Petitioner has applied for Emergency (Covid-19) Parole as per Rule 19(C) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 (as amended).

3. The application for Emergency Parole is rejected on the ground that the Petitioner has not availed of the parole or furlough earlier and that he has been convicted under Section 376(2)(g) of the Indian Penal Code.

4. As regard the ground that the Petitioner has not been released on parole or furlough earlier, this is held to be not as per law by the various decisions of this Court. However, this will not entitle the Petitioner for Emergency (Covid-19) Parole because of his conviction under Section 376(2)(g) (as the provision stood then).

5. A High Power Committee was constituted on 24 March 2020 pursuant to the order passed by the Supreme Court in the Suo Motu Writ Petition No. 1 of 2020 dated 23 March 2020 to determine which classes of prisoners can be released on parole or on an interim bail in the light of Covid-19 pandemic. The High Power Committee's report dated 11 May 2020 as modified by corrigendum dated 18 May 2020, Section 376 in it's entirety is placed in the exclusion category. Apart from the exclusion under the Rule 19(C) (2) of the Rules of 1959 categories or classes stipulated by the High Power Committee will apply. These categories spelt out by the High Power Committee are in addition to the stipulations contained in Rule 19(C)(2) of Rules of 1959.

6. The learned Counsel for the Petitioner has sought to rely upon two orders dated 7 December 2020 passed by this Court that are in *Criminal Writ Petition No. 3080 of 2020 (Ravindrasing @ Munna s/o. Dilipsing Parihar v/s. State of Maharashtra and Anr.)* and *Criminal Writ Petition No. 3077 of 2020 (Mahesh Vasantrao Motaphale v/s. State of Maharashtra and Anr.)* to contend that even in this case the prisoner was convicted under Section 376 (2)(g) and yet he was directed to be released on Emergency (Covid-19) Parole. We have perused the orders. The Division Bench set aside the ground in the impugned orders therein regarding not having released on parole or furlough earlier following earlier judgments. Though in the narration of the fact it is mentioned the prisoner therein was convicted under Section 376(2)(g), there is no specific finding to the entitlement of the Petitioner on this count. The attention of the Division Bench was not drawn to the report of the High Power Committee. The argument based on the report of the High Power Committee was not put into issue by the Respondents and therefore, the same was not adjudicated upon. Therefore these two orders cannot be relied upon by the Petitioner to advance a proposition of law that even though a prisoner is convicted under Section 376(2)(g), inspite of the exclusion contained in the High Power Committee's report, he will be still entitled to emergency parole. It would be relevant to note that the classification/categorization made in the report of the High Power

Committee was challenged in this Court, the challenge was negated and the same was confirmed by the Supreme Court.

7. As a result, no relief can be granted to the Petitioner. The Writ Petition is rejected.

SARANG V. KOTWAL, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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by JYOTI
PRAKASH PAWAR
Date: 2021.12.22
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