

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL WRIT PETITION NO.146/2021

PETITIONER : Ayyaz Khan Zabaz Khan,
C – 4935
Aged about Major,
at present Central Jail,
Amravati.

...VERSUS....

RESPONDENT : 1) Divisional Commissioner,
Division Amravati, Amravati.

2) The Superintendent of Central Jail,
Amravati.

Mr. S. M. Thakre, Advocate (appointed) for petitioner
Mr. N.R. Patil, Addl. PP For respondents

CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.

DATE : 10/03/2021

ORAL JUDGMENT : (PER : AVINASH G. GHAROTE, J.)

1. The present petition, questions the order dated 19/10/2020, passed by the respondent no.2, Superintendent of Central Jail, Amravati, rejecting the application filed by the petitioner dated 6/10/2020, for release of parole on account of Covid-19, in view of the notification dated 08/05/2020, which has

resulted in amendment of Rule 19 (1) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, (for short “the Prisons Rules” hereinafter) by insertion of Clause (C) thereof.

2. The impugned order states that though the petitioner, who is undergoing a sentence of life imprisonment for conviction under Section 302 of I.P.C., had returned on the due date on the last occasion, when he was released on parole, however, since Rule 19 (1) (C) (ii) of the Prisons Rules requires, the release and timely return on the last two occasions to be considered, the application of the petitioner has been rejected. In so far as the ground on which the application of the petitioner has been rejected, the same has been considered by learned Division Bench of this Court in ***Milind Ashok Patil and Ors. Vs. State of Maharashtra and Ors., MANU/MH/0797/2020, decided on 16/07/2020***, wherein it has been held that Rule 19 (1) (C) (ii) of the Prisons Rules, cannot be construed in a pedantic manner, rather, the same has to be construed in a practical way and a condition, which is impossible to be performed, cannot be made applicable, so as to deny the benefit to the prisoner. There cannot be any quarrel with the proposition as

laid down, in light of which, the impugned order, which requires the release and return in due time of the petitioner, cannot be sustained.

3. However, what has to be looked into, is the purpose and object behind enacting Rule 19 (1) (C) of the Prisons Rules, which was so enacted, looking to the pandemic situation created on account of the Covid-19 situation, which required decongestion of Prisons, in order to contain and stop the spread of the virus. The position, as it was on 08/05/2020, when the notification was issued and Rule 19 (1) of the Prisons Rules was amended, has undergone a sea change since then and the position which was extant then, is no longer available now. It is in the changed circumstances that now the implementation of the provision relating to release of convicts, on account of an application being made for release on Covid-19 parole has to be considered.

4. It is trite, that Rule 19 (1) (C) of the Prisons Rules is not mandatory, but is an enabling provision, as it is couched in a language which confers discretion upon the Superintendent of Prisons, to consider the application, which consideration, could only

be upon various factors prevailing, which in the opinion of the Superintendent of Prisons, may necessitate the release of prisoners, enabling the decongestion of the Prisons, in order to arrest the spread of the Covid-19 virus. Neither it can be said, that a claim to be released on Covid-19 parole is a right vested in the prisoner.

5. It is material to note that the Hon'ble Apex Court, in *National Forum on Prison Reforms Vs. Government of NCT of Delhi and Ors., SLP (C) No.13021/2020*, in which a challenge was laid to the order dated 20/10/2020, passed by the Delhi High Court, directing that there would be no further extension of interim bails under the order of the Court, which were on account of the Covid situation, whereby the prisoners released on interim bail were directed to surrender before the Jail Authorities, noting the improving situation, it has been directed that 2,318 prisoners, who were granted interim bail by the Trial Court and 356 prisoners, who were granted interim bail by the High Court, to surrender within 15 days from the date of the order.

6. It is also necessary to note that in Suo Motu Writ Petition (Civil) No.3/2020, while considering the issue about extension of the period of limitation, the Hon'ble Apex Court has observed as under :-

“Though, we have not seen the end of the pandemic, there is considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. We are of the opinion that the order dated 15.03.2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end.”

In view of the above, it would therefore be necessary, for the Superintendent of Jail to, from time to time, assess the Covid-19 situation in the Prisons; ascertain the number of Covid-19 patients in the Prison; determine whether they could be kept in isolation; whether social distancing norms can be safely followed considering the number of Covid-19 patients; what is the threat perception to the Non-Covid patients; whether there is requirement of decongestion of the Prison; in case there is requirement of decongestion, the number of prisoners which would be required to

be released, to ensure social distancing norms and avoiding spread of the virus; the category of prisoners who can be released, depending upon the Covid-19 situation in the locality, to which such released prisoners are expected to go.

7. It is only when, the Superintendent of Prisons, is of the considered opinion, depending upon the factors enumerated above and such other factors, as he thinks necessary to be considered, that there is need for decongestion of the Prisons to avoid the spread of the Covid-19 virus, that it would be permissible for a convicted prisoner to move an application, for considering his release on account of the perceived threat of spread of Covid-19 virus. We are constrained to make the above observations, for the reason, that an impression has been created that a release on Covid-19 parole, is a matter of right, which it is not.

8. As regards the ground stated in the impugned order on the basis of which, application of the petitioner seeking Covid-19 parole has been rejected, we must say that this ground is not available under Government Resolution dated 08/05/2020. One of

the conditions stated in this Government Resolution is that a prisoner in order to be eligible for grant of Covid-19 parole must have returned to the prison on time on two occasions of his last releases. Such being the condition, it is clear that it would be applicable only when a prisoner has been released earlier at least on two occasions or has been released only on one occasion and had not returned to jail on the due date at that time.

9. We have already stated that the view so taken by us is consistent with the view expressed in the judgment of the Coordinate Bench of this Court in ***Milind Ashok Patil*** (supra). Therefore, we find that the impugned order would not sustain in the eyes of law and therefore, it would have to be quashed and set aside. But, as Covid-19 parole is something which does not accrue to a prisoner as a matter of right and it has to be considered in the light of the status of pandemic situation as on the date of consideration of the application, the application of the petitioner would have to be remanded back to the Superintendent of Jail for consideration afresh in accordance with law and the observations made herein above.

10. Thus, we allow the writ petition. The impugned order is hereby quashed and set aside. The matter is remanded back to the respondents for fresh consideration of the application of the petitioner in accordance with law and in the light of the observations made herein above.

Rule is made absolute in the aforesaid terms.

Legal remuneration of Rs.2,500/- (Rupees Two Thousand Five Hundred Only) be paid to the learned Counsel appointed for the petitioner.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE, J.)

Wadkar/R.V. Jalit

Shailendra
Wadkar

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