

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

CRIMINAL WRIT PETN. NO. 327 OF 2021

PETITIONER :- Karan s/o Jairam Soude, Aged-Major,
Occ: Prisoner, R/o Valmik Nagar, Taluka –
Karanjalad, Dist. Washim.
(At present District Prison, Amravati)
Prisoner No.C-5392.

...VERSUS...

RESPONDENTS :- 1. Divisional Commissioner, Amravati
Division, Amravati Bypass Road, Camp,
Amravati.
2. Superintendent of District Prison,
Amravati.

Mr. A.K.Bhangde, Advocate for the petitioner.
Ms N. R. Tripathi, A.P. P. for the respondents.

CORAM : Z.A.HAQ AND AMIT B. BORKAR, JJ.

DATED : 27.04.2021.

ORAL JUDGMENT : (Per : Amit B. Borkar, J.)

1. Heard.

2. **Rule.** Rule made returnable forthwith.

3. By this petition under Article 226 and 227 of the Constitution of India, the petitioner has challenged rejection of his application for parole for a period of 30 days. The petitioner is convicted for the offences punishable under sections 354 and 342 of the Indian Penal Code and sections 10 and 12 of the POCSO Act. The petitioner is undergoing sentence at the District Prison, Amravati.

4. The petitioner, on 01/10/2020, filed an application seeking parole as respondent No.1. The petitioner relied on Rule 19(1) (c) of the Maharashtra Prisons (Bombay Furlough and Parole) Rules, 1959. The respondent No.1, by the impugned order, rejected parole application of the petitioner on the ground that the petitioner has been convicted for the offence under the Special Act (POCSO Act), therefore, the petitioner is not entitled to the benefit of Rule 19(1)(c) of the Maharashtra Prisons (Bombay Furlough and Parole) Rules.

5. The petitioner has challenged the order dated 18/01/2021 by way of present petition. The present petition is filed on 30/03/2021. Curiously the petitioner has annexed two Division Bench judgments of this Court in *Criminal Writ Petition No.559 of 2019 (Vishal Dagduji Gavai v. State of Maharashtra and anr.)* and *Criminal LDVC Writ Petition No.112 of 2020 (Vijendra Malaram Ranwa v. State of*

Maharashtra and anr.), both decided on 14/07/2020. Surprisingly, while making submissions the Advocate for the petitioner placed reliance on the said judgments dated 14/07/2020. We pointed out to the Advocate appearing for the petitioner the Full Bench judgment of this Court in the case of ***Pintu S/o Uttam Sonale v. State of Maharashtra***, reported in ***2020 (6) Mh.L.J. 627***. This court in the case of ***Pintu S/o Uttam Sonale (supra)*** has observed as under:

"24. We thus find that the intention is certainly not to classify the Special Acts only on the applicability of the words as used in the bracketed portion in the proviso but the primary focus of the proviso is to carve out an exception to applicability of sub-rule (C)(ii) for the prisoners who are convicted for serious offences as not only in the specified Special Acts but also under those Special Acts which are intended to be included within the proviso and not specially mentioned. In our clear opinion the Special Acts like POCSO and/or TADA are certainly required to be read in the proviso so as to make sub-rule (C)(ii) inapplicable to the category of convicts falling therein."

6. It was pointed out to the Advocate for the petitioner that Full Bench of this Court has taken a view that prisoners convicted for the offence under the Special Act (POCSO Act) are not entitled to the benefit of emergency parole. On being pointed out judgment of Full Bench, the Advocate for the petitioner has feigned ignorance of Full Bench judgment in the case of ***Pintu Uttam Sonale v. State of Maharashtra (supra)***. We are unable to subscribe to the submission of

advocate for petitioner that he is unaware of judgment of Full Bench particularly when he is exclusively practicing in criminal law and is appearing regularly in the matters of Parole and Furlough.

7. In view judgment of this court in the case of ***Pintu Uttam Sonale v. State of Maharashtra*** (*supra*), there is no merit in the petition.

8. We , therefore, pass following order.

- i. The Writ Petition No.327 of 2021 is dismissed with no order as to costs.

9. Rule stands discharged.

(AMIT B. BORKAR, J)

(Z.A.HAQ, J)