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

CRIMINAL WRIT PETITION NO.435 OF 2021

Akshay s/o Balu Junghare,
Aged about 35 years, r/o
Shnishignapur, tahsil Daryapur,
district Amravati.
(C-5345 – Presently at Central
Prison, Amravati).

..... **Petitioner.**

:: V E R S U S ::

Superintendent of Jail,
Central Prison, Amravati, District
Amravati.

..... **Respondent.**

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Shri S.D.Chande, Counsel for the petitioner.
Mrs.N.R.Tripathi, Additional Public Prosecutor for the respondent/
State.

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CORAM : **V.M.DESHPANDE, &
AMIT B.BORKAR, JJ.**

DATE : **JUNE 21, 2021**

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

1. Heard learned counsel Shri S.D.Chande for the
petitioner and learned Additional Public Prosecutor
Mrs.N.R.Tripathi for the respondent/State. **RULE.** Rule made
returnable forthwith. Heard finally by consent of learned counsel

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for parties.

2. By this writ petition under Articles 226 and 227 of the Constitution of India, the petitioner challenges order dated 27.4.2021 passed by the respondent rejecting application for releasing the petitioner on emergency parole leave for 45 days. The petitioner has been convicted for offences punishable under Sections 302, 323, 143, 148, and 149 of the Indian Penal Code and under Sections 4 and 25 of the Arms Act, 1959.

3. On 1.4.2021, the petitioner applied for his release on emergency parole leave for 45 days. The said application has been rejected by impugned order dated 27.4.2021. The petitioner has, therefore, challenged the said order by way of present writ petition.

4. Learned counsel Shri S.D.Chande for the petitioner, submitted that ground on which the application made by the petitioner for grant of emergency parole leave for 45 days is not sustainable. He submitted that ground mentioned in the impugned order that the petitioner was not released twice earlier

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is not sustainable in view of judgment of this Court in the case of Milind Ashok Patil vs. State of Mah., (Cri.W.P.ASDB-LD-VC-65/2020).

5. Learned Additional Public Prosecutor Mrs.N.R.Tripathi for the respondent/State, submitted that reason mentioned in the impugned order may not be sustainable in view of the judgment cited in the case of Milind Ashok Patil *supra*, the petitioner is not eligible for release on emergency parole leave under provisions of Rule 19(1)(C)(ii) of the Prisons (Bombay Furlough and Parole) Rules, 1959 as the petitioner has also been convicted under the Arms Act which is a Special Act.

6. The point involved in the present writ petition is no longer *res integra* in view of the full bench judgment of this Court in the case of Pintu Uttam Sonale vs. State of Mah, reported at 2020(6) Mh.L.J.627. The full bench of this Court has taken a categorical view that convicts who are convicted under the provisions of the Special Act are not entitled to be released on emergency parole leave. Since it is undisputed fact that the

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petitioner has been convicted under the provisions of the Arms Act, the order passed by the respondent rejecting the application of the petitioner for releasing him on emergency parole leave cannot be faulted with.

7. Since the petitioner is not eligible for release on emergency parole, the impugned order can be sustained on the basis of different reason which goes to the root of the matter.

8. Since there is no merit in the petition, the same is dismissed.

JUDGE

JUDGE

!! BRW !!

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