

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

CRIMINAL WRIT PETITION NO.462 OF 2021

Mohd. Sagir Mohd. Bashir Chauhan,
Aged about 63, C-6450, detained in
Central Prison Amravati, Amravati.
(Presently in Jail).

....PETITIONER

---- VERSUS ----

State of Maharashtra through
Superintendent of Central Prison,
Amravati, Amravati.

.... RESPONDENT

Ms. Radha Mishra, Advocate (Appointed) for the Petitioner.
Shri S.S. Doifode, A.P.P. for the Respondent/State.

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

DATE : 16.07.2021.

ORAL JUDGMENT : [PER: AMIT B. BORKAR, J.]

1. Heard.
2. Rule. Rule made returnable forthwith.
3. By this writ petition under Article 226 and 227 of the Constitution of India, the petitioner is challenging order passed by the respondent rejecting emergency parole leave application for the petitioner for a period of 45 days on the ground that the petitioner

has been convicted for serious offences in a case known as “Bombay Bomb Blast Case”.

4. The petitioner is convicted for the offences punishable under Sections 302, 304, 307, 324, 326, 435, 120-B and Section 34 of the Indian Penal Code, Sections 150(b) and 151 of the Railways Act read with Section 120-B of the Indian Penal Code and Section 4 of the Prevention of Damage to Public Property Act, 1984. The said case is popularly known as “1996 Bomb Blast Case”.

5. On 06.05.2020, the petitioner applied for grant of emergency parole leave for a period of 45 days. On 21.05.2020, the respondent rejected application of the petitioner for emergency parole. The petitioner therefore challenged the said order dated 21.05.2020 by way of Writ Petition before this Court, which was withdrawn with liberty to file fresh application on a fresh cause. The petitioner thereafter again on 31.03.2021 applied for grant of emergency parole which was rejected by the respondent on 26.04.2021 on the ground that the petitioner has been convicted for the offences which are serious in nature. The petitioner has therefore, filed present petition challenging the order dated 26.04.2021.

6. This Court on 05.07.2021 issued notice to the respondent. The respondent in pursuance of the notice filed its reply dated 05.07.2021 pointing out that the petitioner is not eligible for emergency parole as second proviso to Sub Rule (2) (ii) of Rule 19(C) of The Prisons (Bombay Furlough and Parole) Rules, 1959 creates exception for the convicts for serious economic offences or offences under the Special Acts.

7. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

8. The learned counsel for the petitioner placed reliance upon unreported judgment of this Court in Criminal Writ Petition *No.556/2020* in the case of ***Mohd. Sagir Mohd. Bashir Chauhan Vs. State of Maharashtra and anr.*** decided on 08.02.2021 and ***Criminal Writ Petition No.310/2020*** in the case of ***Mohd. Ekbal Mohd. Hanif Shaikh Vs. State of Maharashtra and Ors.*** decided on 18.08.2020. It is submitted that the said petitioners are co-accused along with the petitioner who were released by this Court on emergency parole.

9. We have carefully gone through the unreported aforesaid judgments of this Court. It appears that the Division Bench of this Court in *Criminal Writ Petition No.556/2020* and

Criminal Writ Petition No.310/2020 failed to consider Full Bench Judgment of this Court in the case of ***Pintu S/o. Uttam Sonale Vs. State of Maharashtra*** reported in ***2021 ALL MR (Cri) 822 (FB.)*** The Full Bench of this Court in Case of ***Pintu Uttam Sonale*** (supra) in paragraph No.19 has observed as under. :

“In our opinion the language of the proviso clearly sets out that the provisions sub-rule (C) of Rule 19(1) of the 1959 Rules, would not apply to the prisoners convicted for various economic offences or bank scams or offences under some Special Acts (other than IPC) and some of which are illustratively mentioned by using the word "like" when the proviso refers to the Special Acts namely MCOC, PMLA, MPID, NDPS, UAPA etc. This illustrative reference is further qualified by use of the word "etc" which indicates that the reference to these Special Acts is not exhaustive. The proviso using the words "like" and "etc" is a significant indication of the legislative intent. The intention and object to insert the proviso appears to be quite clear that the provisions of the emergency parole as introduced by sub-rule (C)

would not apply to the prisoners convicted of serious offences under the different Special Acts and who fall within the category as specified in sub-rule C(ii)”

10. It is not in dispute that the petitioner has been convicted for serious offences under the Special Acts viz. Sections 150(b) and 151 of the Railways Act and Section 4 of the Prevention of Damage to Public Property Act, 1984 in a case is known as “Bombay Railways Blast Case”. Therefore, the petitioner is not eligible for being released on emergency parole under Rule 19(1) (C) (ii) of the said Rules. Therefore, there is no merit in the petition and the same is dismissed.

11. Rule is discharged.

The Advocate for the petitioner being appointed shall be entitled to fees of Rs.2,000/- and expenses of Rs.500/-.

She shall be paid total amount of Rs.2,500/- towards her professional charges.

JUDGE

JUDGE