

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

CRIMINAL WRIT PETITION NO.468/2021

Akash Jaykumar Sarojkar,
Convict No. C/9510, aged 26 years,
Occ. Nil, confined at Central Prison,
Nagpur.

.....PETITIONER

...V E R S U S...

1. State of Maharashtra, through
Secretary, Home Department,
Mantralaya, Mumbai.

2. The Superintendent,
Central Prison, Nagpur.

...RESPONDENTS

Ms Shweta D. Wankhede, Advocate for petitioner.
Mrs. N.Tripathi, A.P.P. for non applicants-State.

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

DATE:- AUGUST 23, 2021

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

1. Rule. Rule is made returnable forthwith. Heard finally
by consent of the learned counsel for the parties.

2. By this petition under Articles 226 and 227 of the
Constitution of India, the petitioner is seeking emergency parole
of 45 days under Rule 19 (1)(C)(ii) of the Maharashtra Prisons
(Bombay Furlough and Parole) Rules, 1959.

3. The petitioner is convicted for the offence punishable under Sections 302, 143, 147, 148 of the Indian Penal Code and has already completed seven years of imprisonment.

The petitioner has filed an application under Rule 19 (1)(C)(ii) of Parole Rules, 1959. The said application has been rejected by the respondent no.2.

The petitioner has, therefore, filed the present petition.

4. This Court on 07.07.2021 issued notices to the respondents. In pursuance of the said notice, respondent no.2 has filed affidavit-in-reply, stating that in addition to the offence above, the petitioner was convicted under Crime No.778/2020, which was registered against the petitioner under Section 397 read with Section 34 of the Indian Penal Code and Section 4/25 of the Arms Act, wherein he has been released on bail on 12.11.2020.

5. From the reply and in particular paragraph nos. 4 and 5, it is clear that when the petitioner was released on parole and furlough, he has surrendered himself in jail in time.

6. It is not in dispute that notification issued under the provisions of Disaster Management Act is still in force. The reason stated in the impugned order to the effect that the offence under Sections 397 and 34 of the IPC and section 4/25 of the Arms Act has been pending against the petitioner. In our considered view, taking into consideration Rule 19 (1)(C)(ii) of Parole Rules, 1959, respondent no.2 was not justified in rejecting the emergency parole application of the petitioner on the ground that offence under Section 397 read with Section 34 of the IPC and Section 4/25 of the Arms Act has been pending against the petitioner, especially when the petitioner has been released on bail on 12.11.2020 for the said offence.

7. Hence, we are of the view that the petitioner shall be entitled for being released on emergency parole of 45 days. Hence, we pass the following order.

ORDER

- (i) Criminal Writ Petition No.468/2021 is allowed.
- (ii) Impugned order dated 10.06.2021 passed by respondent no.2-Superintendent, Nagpur Central Prison, Nagpur (Annexure-3) is quashed and set aside.

(iii) Respondent no.2 is directed to release the petitioner on emergency parole, on such terms and conditions as respondent no.2 deems fit and proper, within one week from the date of receipt of this order.

Rule is made absolute in the above terms.

JUDGE

JUDGE

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