

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

CRIMINAL WRIT PETITION NO.483 OF 2021

Roop Khan Noor Khan C-4519,
Aged – Major, Occ- Nil
Central Prison, Amravati.

.....PETITIONER

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

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

....RESPONDENT

Shri S.R. Jaiswal, Advocate for petitioner.
Shri D.P. Thakare, A.P.P. for respondent.

CORAM:- A.S. CHANDURKAR &
PUSHPA V. GANEDIWALA, JJ.

DATE :- 14th SEPTEMBER, 2021

JUDGMENT (PER : PUSHPA V. GANEDIWALA, J.)

Rule. Rule is made returnable forthwith. Heard finally with consent of learned counsel for both the parties.

2. The petitioner is a life convict for the offence punishable under Section 376 (2)(g) of the Indian Penal Code, presently lodged in Central Prison, Amravati. He is undergoing a sentence of life imprisonment since 2010. It is stated that he has never availed furlough or regular parole earlier as he was not eligible as per the rules.

3. In this petition, the petitioner has challenged the order of rejection of emergency parole to him passed by the respondent – Superintendent of Prison, Central Prison, Amravati.

The reason for rejection of emergency parole is that the condition of Covid-19 pandemic, in the Amravati Central Prison, is under control and the prescribed protocol for Covid-19 is being followed scrupulously.

4. Shri S.R. Jaiswal, learned counsel appearing on behalf of petitioner invited attention of this Court to the Notification issued by the Home Department, State of Maharashtra dated 08.05.2020, whereby the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 (“Furlough and Parole Rules of 1959”) came to be amended, thereby added clause (C) to the Rule 19(1) after clause (B). Learned counsel further submitted that as per this new amendment, the convicted prisoners whose maximum sentence is above 7 years are also eligible to be considered for release on emergency parole. Learned counsel submitted that the respondent has committed a gross error in not appreciating the aforesaid Notification in its true sense. Attention has been invited to the judgment of the Division Bench in **Kalyan Bansidharrao Renge Vs. The State of Maharashtra and another [Criminal Writ Petition No.ASDB-LD-VC 265 of 2020 dated 28.08.2020]** by the learned counsel for the petitioner to submit that even if conviction is for offence punishable by maximum sentence above seven years benefit of Notification dated 08.05.2020 has been given. Learned

counsel urged to release the petitioner on parole for initial period of 45 days.

5. Shri D.P. Thakare, learned Additional Public Prosecutor by relying upon the reply filed by the respondent submits that considering the reasons furnished by the petitioner he cannot rely upon the provisions of Rule 19(1)(C)(ii) for such release. The conditions stipulated therein have to be satisfied.

6. We have considered the rival submissions. At the outset before appreciating the rival contention it would be appropriate to reproduce Rule 19 of Furlough and Parole Rules of 1959 which deals with emergency parole.

“19. When a prisoner may be released on emergency parole:-.

(1) Emergency Parole. –

(A) All convicted prisoners except foreigner and death sentence prisoners may be eligible for emergency parole for 14 days for death of parental grandfather or grandmother/father/mother/spouse/son/daughter/sibling and delivery of wife (except high security risk prisoner) after confirmation by the police and marriage of son/daughter/sibling, provided that no extension can be granted to emergency parole.

(B) Emergency Parole may be granted by the Superintendent of Prison for the reason of death of parental grandfather or grandmother/father/mother/spouse/son/daughter/sibling and delivery of wife (except high security risk prisoner) after confirmation by the police and by concerned Dy. I.G. for the reason of marriage of son/daughter/sibling and the Authority approving emergency Parole shall decide whether to grant parole under police escort or with a condition to report daily to the local police station depending upon the crime committed by the prisoner and his conduct during his stay. The expenses of police escort will be borne by the prisoner himself prior to his release on parole.

(C) On declaration of epidemic under the Epidemic Disease Act, 1897, by State Government :

(i) For convicted Prisoners whose maximum punishment is 7 years or less, on their application shall be favorably considered for release on emergency parole by the Superintendent of Prison for a period of 45 days or till such time that the State Government withdraws the Notification issued under the Epidemics Disease Act, 1897 whichever is earlier. The initial period of 45 days shall extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days.

(ii) For convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by

Superintendent of Prison, if the convict has returned to prison on time on last 2 releases (whether on prole or furlough), for the period of 45 days or till such time that the State Government withdraws the Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days:

Provided that the aforesaid directions shall not apply to convicted for serious economic offences or bank scams or offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA etc. (which provide for additional restrictions on grant of bail in addition to those under the Code of Criminal Procedure, 1973 (2 of 1974) and also presently to foreign national and prisoners having their place of residence out of the State of Maharashtra.”

7. A perusal of the aforesaid Rule would indicate that the petitioner is otherwise eligible for release on emergency parole on the ground of declaration of epidemic under Epidemic Diseases Act, 1897, by the State Government, as admittedly, the case of the petitioner does not fall in the exceptions which are provided in the proviso to the aforesaid Clause (C) of Rule 19 (1) of the Furlough and Parole Rules of 1959.

8. In the above cited case of **Kalyan Bansidharrao Renge** (supra) the petitioner was convicted for the offence punishable under Section 376D of IPC and was sentenced for 10 years imprisonment. In the instant case, the petitioner is convicted for the offence punishable under Section 376(2)(g) of IPC before amendment (gang rape) and was sentenced for life imprisonment till end of his natural life, which shall mean imprisonment for the remainder of his natural life.

9. A perusal of newly added Clause (C) (ii) of 19 (1) of would indicate that for releasing the convict on emergency parole, who were convicted for sentence of imprisonment above 7 years, direction is given to the Superintendent of Prison to consider the application 'appropriately' and while for release of the convicts who have to suffer imprisonment below 7 years, the direction is given to the Superintendent of Prisoner to consider the release on emergency parole 'favorably'. As the petitioner is undergoing sentence of imprisonment for the commission of the offence of rape, as per Bombay Parole and Furlough Rules, 1959, he is not eligible for regular Parole or Furlough. However, as per new amendment in the rules, he is eligible for emergency parole on the ground of declaration of epidemic and the discretion is bestowed upon the Superintendent of jail to exercise the same 'appropriately'.

10. Undisputedly, the petitioner is undergoing sentence life imprisonment since the year 2010 without any release on parole or furlough and therefore, there is no question to consider the condition as to whether on earlier two occasions of his release (*whether on prole or furlough*) the convict had returned to the prison on time, as urged by the learned APP on behalf of the respondent-State. The reference to this aspect in the impugned order is thus not justified. It is also not disputed that apprehension of third wave is still in the air. The impugned order came to be passed on 06.06.2021. Thereafter, the situation is quite changed. In such circumstances we find it appropriate to direct the respondent – Superintendent of Prison to re-consider the application of the petitioner considering the present situation. Accordingly, the impugned order is quashed and set aside with further direction to the respondent that the application shall be decided within a period of three weeks from the date of communication of the order. Rule is disposed of in the above terms.

JUDGE

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