

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

CRIMINAL WRIT PETITION NO. 464/2021

(NAVIN ASHOK BOGADE **VERSUS** SUPERINTENDENT OF PRISONS, CENTRAL JAIL AMRAVATI
& OTHERS)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri S.R. Jaiswal, counsel (appointed) for the petitioner.
Ms S.S. Jachak, A.PP for the respondents.

CORAM : A. S. CHANDURKAR AND G.A. SANAP, JJ.

DATED : 03RD SEPTEMBER, 2021.

The petitioner has challenged the order dated 13.01.2021 passed by the respondent no.1 refusing the request made by the petitioner to release him on parole for a period of forty five days so as to perform religious rites in view of death of his mother. The said application has been rejected on the ground that the petitioner stands convicted for the offence punishable under Section 376(D), 452 read with Section 34 of the Indian Penal Code and hence in view of the provisions of Rule 19(2) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules 1959 he is not eligible for such release. The learned counsel for the petitioner by relying upon the notification dated 08.05.2020 submits that in view of Rule 19(1)(C)(ii) thereof the petitioner is entitled for release on emergency parole. According to him by an earlier order dated 05.09.2020 he was directed to be released on parole for a period of three days. However the benefit of that order could not be availed for want of proper surety. He thus submits that considering the reasons assigned the petitioner is entitled for such release.

The learned Additional Public Prosecutor by relying upon the reply filed by the respondent no.2 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.

We find from the record that the mother of the petitioner expired on 29.08.2020. The earlier order granting him such liberty could not be availed of for want of proper surety. By the impugned order the prayer for release on parole has been rejected by relying upon Rule 19(2) on the ground that the

offence committed was under Section 376(D) of the Penal Code. It is found that the order impugned is dated 13.01.2021. Attention has been invited to the judgment of the Division Bench in *Kalyan Bansidharrao Renge Versus The State of Maharashtra & 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.

We find that the interest of justice would be served by permitting the petitioner to move an application seeking his release on emergency parole under Rule 19(1)(C)(ii) of the Rules of 1959 in the light of the decision referred to hereinabove. Accordingly the writ petition is disposed of by issuing the following directions:-

- (a) The petitioner is at liberty to move a fresh application for his release on emergency parole under notification dated 08.05.2020 within a period of one week from today.
- (b) The respondent no.1 shall thereafter within a period of ten days decide the aforesaid application in the light of the observations made hereinabove.
- (c) The fees of the learned counsel appointed for the petitioner are quantified at Rs.2,500/-.

With these directions, the writ petition stands disposed of.

(G.A. SANAP, J.)

(A. S. CHANDURKAR, J.)