

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

CRIMINAL WRIT PETITION NO.549 OF 2021

Sanjay S/o. Rangrut Madkam
(Convict No. Age -32,
R/o. Mundarai (Bhuma), Seoni,
Dist. Seoni, (M.P.)
Presently Convict No. C/7219,
Central Prison, Nagpur.

....PETITIONER

---- VERSUS ----

1. State of Maharashtra Through
The Deputy Inspector General of Prison,
Central Prison Eastern Region,
Nagpur.
2. Divisional Commissioner,
Nagpur Division, Nagpur.
3. Superintendent of Prison,
Central Prison, Nagpur.

.... RESPONDENTS.

Mr. V. N. Mate, Advocate for the Petitioner.
Mr. S. M. Ghodeswar, A.P.P for the Respondents/State.

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

DATE : 04.10.2021.

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

1. Heard.
2. **Rule.** Rule is made returnable forthwith.
3. By this petition under Article 226 and 227 of the
Constitution of India, the petitioner is challenging order dated

30.05.2021 passed by the respondent No.3 thereby rejecting the emergency parole leave of the petitioner under Rule 19(1)(C) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (hereinafter refers as “The Rules of 1959”).

4. The petitioner is a convict for the offences under Sections 396 and 397 of the Indian Penal Code and had already undergone actual imprisonment of 17 years, 8 months and 8 days on the date of filing of application.

5. The petitioner on 24.05.2021 filed an application for emergency parole with the respondent No.3 placing reliance on Rule 19(1)(C) of the Rules of 1959. The said application is rejected by the impugned order dated 30.05.2021.

6. The petitioner has therefore filed present petition challenging the order dated 30.05.2021. This Court on 12.08.2021 issued notice to the respondents. The respondent No.3 has filed reply dated 01.09.2021 stating that the petitioner has been convicted for the offences under Sections 396 and 397 of the Indian Penal Code and therefore he is not eligible for being released on emergency parole leave.

7. Mr. V. N. Mate, learned Advocate for the petitioner placed reliance on unreported judgment of this Court in Writ Petition No.2386/2021 in support of his submission that even though a prisoner is not eligible for being released on regular parole, Rule 19 being a special provision where all convicts are required to be released on fulfillment of conditions stated in Rule 19. He also placed reliance upon unreported judgment of this Court in Criminal Writ Petition (St.) No.4216/2020.

8. Ms N. R. Tripathi, learned Additional Public Prosecutor submitted that since the petitioner is not entitled for regular parole in view of Rule 4(2) of the said Rules, he is not entitled to be released on emergency parole.

9. We have carefully considered the averments in the petition and the reply filed by the respondent No.3. On careful perusal of Rule 4(2) and the language of Rule 19(1) of the said Rules, we are of the view that Rule 19(1) gives limited right in favour of all convicts, which right is not available in case of regular parole or regular furlough. The issue involved is no longer in his *res integra* in view of the judgment of this Court in the case of ***Baburao Marotrao Dakhore Vs. State of Maharashtra and Ors.*** reported in ***2017 (4) B.C.R. (Cri.) 701***, wherein this Court after considering the scheme of Rule 19 and Rule 4 of the said Rules has

taken a view that taking into consideration the language of Rule 4 and 19 of the said Rules, a prisoner is entitled for emergency parole, even if, he is not eligible for regular parole. In view of the judgment of Coordinate Bench of this Court and also in view of unreported judgments of this Court in Writ Petition No.2386/2021 and Criminal Writ Petition (St.) No.4216/2020, we are of the view that the petitioner is entitled to be released on emergency parole under Rule 19(1)(C) of the said Rules.

10. Therefore, we pass following order :

- i] The impugned order dated 30.05.2021 passed by the respondent No.3 is quashed and set aside.
- ii] The respondent No.3 is directed to release the petitioner on emergency parole on such terms and conditions as may be permissible under the Rules within one week from the date of receipt of this order.

11. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE