

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

CRIMINAL WRIT PETITION NO. 513/2020

(Mukesh S/o Punamchand Patel Vs. Divisional Commissioner, Amravati Division, Amravati and another.)

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

Court's or Judge's orders

Shri D.A. Sonawane, Advocate (Appointed) for petitioner.
Shri Amit Chutke, A.P.P. for respondent/State.

CORAM : PRASANNA B. VARALE &
N.B. SURYAWANSHI, JJ.
DATED : MARCH 22, 2021.

Heard Shri D.A. Sonawane, learned counsel for the petitioner and Shri Amit Chutke, learned Additional Public Prosecutor for the respondent nos. 1 and 2- State authorities.

2. Shri Sonawane, learned counsel appointed for the petitioner through High Court Legal Aid Services Sub-Committee, Nagpur, vehemently submitted that the order passed by the Prison Authorities whereby the application submitted by the petitioner Convict No.4864 lodged at Amravati Central Prison, Amravati, seeking parole leave was rejected, is unsustainable.

3. Shri Sonawane, learned counsel for the petitioner submitted that the petitioner was an accused in Sessions Case arising out of Crime No.86 of 2011 registered at Police Station Malkapur, District Buldhana, for an offence punishable under Sections 302, 307, 353

and 201 of the Indian Penal Code and Sections 3 and 25 of the Indian Arms Act. The learned Trial Court by its judgment and order dated 13/04/2016 awarded conviction and sentenced the petitioner accordingly. The petitioner is suffering the sentence at Central Prison Amravati.

4. Shri Sonawane, learned counsel for the petitioner therefore submitted that in view of the COVID-19 Pandemic, the State Government in its wisdom thought it fit to issue a Circular and granted benefit of parole and furlough leave to the prisoners subject to certain conditions. Shri Sonawane, learned counsel for the petitioner then submitted that in Government Notification dated 08/05/2020, Clause-C is added in sub-rule(i) of Rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959. The copy of Circular is placed on record as Annexure-C. Shri Sonawane, learned counsel for the petitioner therefore submitted that admittedly the petitioner was not an accused in serious offences referred to in the proviso of Circular dated 08/05/2020 such as MCOC, PMLA, MPID, NDPS, UAPA etc. It is also submitted by Shri Sonawane, learned counsel for the petitioner that the respondents authorities, only relying on the latter part of the proviso and that the petitioner is resident of a State other than State of Maharashtra that is the State of Madhya Pradesh, declined to grant the benefits of parole to the petitioner. It is also submitted by Shri Sonawane, learned counsel for the petitioner that respondent authorities ought to

have considered the application in a broad light by giving a meaningful reading to the proviso instead of adopting hyper-technical approach.

5. Per contra, the learned Additional Public Prosecutor submitted that the authorities committed no error in rejecting the prayer for parole leave, in view of the Government Circular dated 08/05/2020 which was prevalent at that point of time.

6. Learned Additional Public Prosecutor then submitted that subsequently, the State Government issued a fresh Notification on 30/11/2020 and the benefit is now extended to the convicts who are residents of the other States. The learned Additional Public Prosecutor, in view of the subsequent Notification submitted that let the petitioner file a fresh application seeking parole leave before the competent authorities and the competent authorities on receipt of the application would decide the same, in accordance with Rules and the other conditions prescribed in the Government Circular dated 08/05/2020, initially and subsequently modified by Government Circular dated 30/11/2020.

7. Shri Sonawane, learned counsel for the petitioner submits that the petitioner would file an appropriate application within one week from today and the authorities be directed to decide the application within a stipulated period.

8. In view of above referred facts, we dispose of the Writ Petition with liberty to the petitioner to file an application for parole leave afresh within one week from today. The respondent authorities to decide the application within one week from the date of receipt of the application, considering the Government Notification dated 30/11/2020.

9. With these directions, writ petition is disposed of.

10. We quantify the fees of Shri Sonawane, learned counsel for the petitioner appointed through High Court Legal Services Sub Committee, Nagpur at Rs.2000/-.

11. Learned Additional Public Prosecutor to communicate this order to the prisoner who is lodged at Central Prison, Amravati as Convict No. 4864.

(N.B.SURYAWANSHI, J.)

(PRASANNA B. VARALE, J)