

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

CRIMINAL WRIT PETITION NO.586 OF 2021

Kundan S/o. Chandrashekhar Chaudhari,
Aged about 45 years, Occ : Nil,
Convict No. C-5540,
Presently at Central Prison, Amravati.
(THROUGH LEGAL AID).

....PETITIONER

---- VERSUS ----

1. The State of Maharashtra,
through the Divisional Commissioner,
Amravati.

2. The Superintendent,
Amravati Central Prison, Amravati.

.... RESPONDENTS

Shri S. G. Joshi, Advocate (Appointed) for the Petitioner.
Shri S. M. Ghodeswar, A.P. P. for the Respondents/State.

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

DATE : 31.08.2021.

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

1. Heard.

2. Rule. Rule made returnable forthwith.

3. By this writ petition under Article 226 of the Constitution of India, the petitioner is challenging order dated 29.05.2021 passed by the respondent No.2 refusing to grant emergency parole to the petitioner under Rule 19(C)(ii) of the Prisons (Bombay Furlough and Parole) Rules, 1959.

4. The petitioner is a convict for the offence punishable under Section 304 read with Section 34 of the Indian Penal Code, and has been undergoing sentenced to suffer imprisonment for 10 years. The petitioner has presently undergoing his sentence at Central Prison, Amravati.

5. The petitioner on 20.05.2021 filed an application for his release on emergency parole. The said application came to be rejected by the impugned order dated 29.05.2021 by the respondent No.2. The application is rejected mainly on the ground that the petitioner has not been released on parole or furlough earlier.

6. The petitioner has therefore challenged the order dated 29.05.2021 by way of present petition. This Court on 13.08.2021 issued notice to the respondents. The respondent No.2 has filed affidavit dated 23.08.2021 wherein it is stated that the Prison Authorities has already made proper arrangement to control spread of COVID-19 virus. It is stated that since the petitioner has not been released on two occasions either on parole or furlough and therefore, the petitioner is not eligible for emergency parole.

7. Issue involved in the present petition is no more *res integra* in view of the judgment of this Court in **Criminal Writ Petition-ASDB-LD-VC No. 65/2020 (Milind Ashok Patil Vs. State of**

Maharashtra decided on 16.07.2020). This Court while disposing of the said Criminal Writ Petition considered Clause No. 8(ii) of the High Powered Committee decision, and after detailed analysis of the relevant provisions in paragraph Nos. 13 and 15 observed thus :-

“13. Thus, it is clear that the said amended provision is made for short period and is brought into existence for main object of reducing the overcrowding in the jail. However, while releasing the convicts on emergency parole in view of the declaration of epidemic under the Epidemic Diseases Act, 1897, it is also required to ensure that the said benefit cannot be extended to the prisoners likely to commit offence in case of temporary release i.e. habitual offenders or likelihood of absconding of such accused and in such case the emergency parole can be rejected. For ensuring this, it is provided that the convicts whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by the Superintendent of Prison, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough). Therefore, the object while granting the emergency parole is to see that overcrowding in prison is reduced. However, at the same time, it is to ensure that the habitual offender or prisoners who are likely to abscond are deprived of emergency parole and therefore, the aforesaid amended rule was brought into effect. However, if such convicts are never released either on furlough or parole previously or not released on 2

occasions either on furlough or parole and therefore, there was no occasion for them to return back within time on 2 occasions and therefore, not entitled for said benefit of emergency parole, such literal interpretation may lead to absurdity and in that event, there is no occasion to invoke condition imposed under the said amended Parole Rule.

15. Thus, it is clear that the condition mentioned in the amended clause (C)(ii) of convict returning back on time on last 2 releases will be applicable only if the convict is released on 2 occasions either on furlough leave or parole leave or their applications are rejected on the ground that they are habitual offenders or likely to abscond. In this behalf, it is significant to note that the difference between Clause (C)(i) and (ii). The clause (c)(i) of the amendment which is applicable to convicted prisoners whose maximum punishment is 7 years or less provides that “application shall be favourably considered”; whereas clause (C)(ii) which is applicable to the prisoners whose maximum sentence is above 7 years provides that “application shall be appropriately considered”. To ensure that such convicts should not abscond, the said amended provision stipulates that once in every 30 days, the convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing. If the convicts are not released on 2 occasions either on furlough or parole and/or their previous applications are not rejected either on the ground that they are habitual offenders or likely to

abscond then the Authorities can still consider their applications for release on emergency parole. However, we make it clear that if the convicts are released on 2 occasions or on 1 occasion, either on parole or furlough previously and they are late in surrendering then they are not entitled for the benefit of the emergency parole. It is further clarified that the Authorities can impose suitable stringent conditions on the convicts who were never released on parole or furlough or released on 1 occasion and returned back within time, if they are otherwise entitled for the benefit of emergency parole.”

8. In view of the said judgment, the respondent No.2 was not justified in rejecting parole leave application of the petitioner. The respondent No.2 is therefore directed to release the petitioner on emergency parole on said terms and conditions which are permissible as per prison Rules. It is made clear that the respondent No.2 shall not impose unreasonable conditions.

9. The petition is therefore, allowed.

10. The impugned order dated 29.05.2021 passed by the respondent No.2 rejecting the emergency parole leave application of the petitioner is quashed and set aside.

11. The Respondent No. 2 is directed to release the petitioner on emergency parole on such terms and conditions as

permissible under Rules. The respondent no. 2 shall not impose any unreasonable conditions while releasing the petitioner.

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

Shri S. G. Joshi, Advocate appointed for the petitioner is entitled to fees quantified at Rs.1500/-.

JUDGE

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