

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

Criminal Writ Petition No.699/2021

Gourav Narendra Singh-C-5024,
aged about 30, Occ. Nil, Central Prison, Amravati. ...Petitioner

VERSUS

1. Superintendent of Prison,
Central Jail, Amravati, Tehsil and District, Amravati.
2. Divisional Commissioner,
Amravati Division, Bypass Road, Camp,
Tehsil Amravati and District Amravati. .Respondents

Mr. S.R. Jaiswal, Advocate for petitioner.
Mrs. Nandita Tripathi, APP for respondents.

**CORAM : M.S. SONAK &
PUSHPA V. GANEDIWALA, JJ.**
DATE : 21-12-2021.

J U D G M E N T (Per : Pushpa V. Ganediwala, J.)

Rule. Rule is made returnable forthwith. Heard finally with the consent of learned Counsel appearing on behalf of both the sides.

2. The petitioner, by way of the present writ petition under Article 226 of the Constitution of

India, is challenging the order dated 29.05.2021, passed by the respondent no.1, thereby refusing to release the petitioner on parole for 45 days under Rule 19(1)(c)(ii) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 (hereinafter referred to as “the said Rules” for short) since the petitioner has never been released on parole or furlough leave earlier and that in the present situation all the precautionary measures are being followed by Prison Authority for controlling the Covid-19 pandemic.

3. The petitioner is undergoing sentence of 10 years for the offence punishable under Section 376 and 506 of the Indian Penal Code (for short “IPC”). In terms of Rule 4(12) of the Prison Rules, the prisoners convicted for the offence of rape are not eligible for furlough or parole leave. Therefore, there was no occasion for him to apply parole or furlough leave as he has not undergone the stipulated sentence for the offence under Section 376 of IPC.

4. Learned counsel Shri Sham jaiswal appearing for the petitioner stated that the respondent no.1 without considering the

notification dated 08.05.2020 rejected the application for emergency parole.

5. *Per contra*, learned Additional Public Prosecutor, Smt. Nandita Tripathi, for the respondents/State opposed the petition by filing affidavit-in-reply. Learned Additional Public Prosecutor submitted that the petitioner had never been released on parole or furlough leave and every precautions are being taken in Jail for preventing the spread of Covid-19. She further submitted that as the severity of the pandemic is under control and everything is in its normal position, the petitioner is not entitled for parole or furlough leave.

6. We have considered the rival submissions.

7. At the outset, we are satisfied that the case of the petitioner falls for the benefit which has been extended to the prisoners vide Notification dated 08.05.2020. In this context, this Court in Criminal Writ Petition No.146/2021 (Ayyaz Khan Zabaz Khan Vs. Divisional Commissioner, Division Amravati, Amravati and another) passed on 10.03.2021 wherein, in paragraph 8, this Court has observed as under :

"8. As regards the ground stated in the impugned order on the basis of which, application of the petitioner seeking Covid-19 parole has been rejected, we must say that this ground is not available under Government Resolution dated 08/05/2020. One of the conditions stated in this Government Resolution is that a prisoner in order to be

eligible for grant of Covid-19 parole must have returned to the prison on time on two occasions of his last releases. Such being the condition, it is clear that it would be applicable only when a prisoner has been released earlier at least on two occasions or has been released only on one occasion and had not returned to jail on the due date at that time."

8. In the aforesaid order it is made clear that the condition with regard to return of prisoner on-time on two occasions of his last releases, would be applicable only when a prisoner has been released earlier at least on two occasions or has been released only one occasion and had not returned to jail on due date at that time.

9. This Court in the aforesaid order while remanding the matter for afresh consideration observed that Covid-19 parole is something which does not accrue to a prisoner as a matter of right and it has to be considered in the light of the status of pandemic situation as on the date of consideration of the application.

10. In the instant case, the record reveals that the application for emergency parole came to be filed by the petitioner on 20.05.2021 and the same came to be rejected vide order dated 29.05.2021 on the erroneous ground that he has not been released earlier. We find that the

petitioner has made out a case for remand of the matter for afresh consideration by the Authority in the light of the above observations and in the light of the Covid-19 situation in jail at the time of filing of application by the petitioner i.e. on 20.05.2021.

11. Thus, we allow the Writ Petition. The impugned order dated 29.05.2021 passed by the respondent no.1 is hereby quashed and set aside. The matter is remanded to the respondent no.1 for fresh consideration of the application of the petitioner in accordance with the law and in the light of the observations made herein above and the same shall be decided expeditiously preferably within a period of two weeks from the date of communication of this order to the authority.

12. The rule is made absolute in the above terms. There shall be no order for costs.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)