

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

CRIMINAL WRIT PETITION NO.660/2020

Anand S/o Prakash Artani,
(C/9457) aged 34 Yrs., Occ. Nil,
R/o Shivshakti, Plot No.47, Bhagabai
Layout, Jaripatka, Dist. Nagpur
(presently at Central Prison, Nagpur.)

..Petitioner.

..Vs..

1. State of Maharashtra,
through Secretary, Home Department,
Mantralaya, Mumbai.
2. The Superintendent of Central Prison,
Nagpur.

..Respondents.

Shri S.D. Sahoo, Advocate for the petitioner.

Shri A.S. Fulzele, Additional Public Prosecutor for the respondents.

**CORAM :- SUNIL B. SHUKRE AND
AVINASH G. GHAROTE , JJ.**

DATED :- 9.2.2021

ORAL JUDGMENT *(Per Sunil B. Shukre, J.)*

1. Heard. **Rule.** Rule made returnable forthwith. Heard finally by consent.

2. On going through the impugned order dated 3.1.2021, we find that it is passed upon a reason, which was never in existence.

The impugned order states that as per the requirement of the Government Resolution dated 8.5.2020, a prisoner seeking Covid-19 parole must have returned to prison on time at the time of his last two releases, whether on parole or furlough, and that this condition has not been satisfied by the petitioner as he was released only on one occasion in the past. We are of the view that such interpretation of the condition is misconceived. This condition would come into play only when a prisoner in question has been released at least twice in the past. When, there was no occasion for the prisoner to secure his release at least on two occasions or more in the past, the question of examining his return on time to the prison would never arise. When a prisoner has never had an experience of enjoying his two releases before availing of Covid-19 parole, any insistence upon performance of the condition of return to prison on time at least on two releases would amount to a demand for an impossibility. Another Bench of this Court to which one of us was party, while deciding the case LD-VC-Criminal Writ Petition No.345/2020 (Imtiaz Usman Memon V/s. State of Maharashtra and another) on 4.8.2020, took the view in this context that the petitioner cannot be asked to comply with condition, which is impossible of performance. Therefore, impugned order passed upon a reason not really in existence, cannot be sustained in the eye of law.

3. Now, the question would be even if the impugned order is to be interfered with, whether any further direction to respondent No.2 could be given for release of the petitioner on Covid-19 parole and our answer to the question is emphatic no. The reason being that the severity of Covid-19 has been considerably reduced and with it the risk of several prisoners being kept in the prison simultaneously resulting in spread of pandemic has also been decreased. If this is so, the purpose for which Covid-19 parole could otherwise have been granted to a prisoner like the petitioner no longer exists and it is for this reason, we are not inclined to make any interference in the impugned order. The petition stands dismissed. Rule is discharged.

JUDGE

JUDGE