

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

CRIMINAL WRIT PETITION NO.689 OF 2020

Vasant Shankar Waghmare,
Aged 38 years, Occu. Nil,
R/o. At Post – Galsure, Adiwasi,
Wadi, Tah. Shriwardhan,
District-Raigad
(Presently Central Prison,
Amravati No.5404)

...

Petitioner

.. Versus ..

Superintendent of Jail,
Central Prison, Amravati,
District-Amravati.

...

Respondent

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Ms. Ragini Zarbade, Adv. h/f Shri S.D. Chande, Advocate for the
petitioner,
Shri A.R. Chutke, APP for the respondent-State.

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CORAM : PRASANNA B. VARALE AND
N.B. SURYAWANSHI, JJ.

DATED : 30.03.2021.

P.C.

Heard the learned counsel for the petitioner and the
learned Additional Public Prosecutor for the respondent-State.

2. The petitioner, a convict suffering sentence, lodged in
Amravati Prison as Convict No.5404, submitted an application

seeking emergency parole leave for 45 days taking recourse to Govt. Circular dated 8.5.2020.

3. The Competent Authority, by order dated 19.10.2020, rejected the application of the petitioner. The learned counsel for the petitioner vehemently submitted that while rejecting the application, by order dated 19.10.2020, the respondent-Superintendent of Jail erroneously placed a reliance on Clause (ii) of Circular dated 8.5.2020. It is the submission of the learned counsel for the petitioner that the petitioner, who is suffering a sentence of life imprisonment, had not availed the parole or furlough leave even for once prior to his application dated 8.10.2020. As such, the Authority ought not to have treated this reason adversely affecting the claim of the petitioner. The learned counsel thus prayed for allowing the petition. It is further submitted by the learned counsel for the petitioner that the State in its wisdom thought it fit to release the certain prisoners on account of pandemic situation so as to avoid overcrowding in the prison. Thus, the rejection is contrary to the object to be achieved by the Circular dated 8.5.2020.

4. The learned APP, *per contra*, vehemently opposed the petition and supported the order impugned in the petition. He submitted that though the notification dated 8.5.2020 was issued in view of the declaration of Epidemic Diseases Act, 1897, the earlier Notification more particularly the Notification

dated 16.4.2018 is not superseded by the Notification dated 8.5.2020. The Notification dated 8.5.2020 is only an additional measures to deal with the unforeseen situation arisen due to the Covid pandemic. The learned APP invited our attention to Rule 4 and more particularly Sub-Rules (12) and (21) of the Prisons (Bombay Furlough and Parole) Rules, 1959. The learned APP also invited our attention to an order passed by the Division Bench in Criminal Writ Petition No.66/2021 in the matter of Shankar Kashinath Bhogade (C-5822) .vs. Deputy Inspector General (Prisons) (East), Nagpur and another, dated 23.3.2021.

5. Though the submission of the learned counsel for the petitioner looks attractive at the first blush, considering the material placed on record and the submission of the learned APP as well as the perusal of Notification dated 16.4.2018 and the order of the Division Bench dated 23.3.2021, we are unable to persuade ourselves to accept the submission of the learned counsel for the petitioner. The impugned order in the petition though refers to Clause (ii) of Notification dated 8.5.2020, it is not in dispute that this Notification was issued in view of a peculiar circumstance i.e. Covid Pandemic and it is made clear in the Notification itself by making a reference to a statement “© On declaration of epidemic under the Epidemic Diseases Act, 1897, the State Government :

(i) For convicted Prisoners whose maximum punishment is 7 years or less, on their application shall be favorably considered for release on emergency parole by the

Superintendent of Prison for a period of 45 days or till such time that the State Government withdraws the Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days.

(ii) For convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by Superintendent of Prison, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough), for the period of 45 days or till such time that the State Government withdraws the Notification issued under the Epidemics Diseases Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks in 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days.”

6. The learned APP was justified in placing reliance on Notification dated 16.4.2018. It is not in dispute that the petitioner is a convict suffering his punishment for life imprisonment in Sessions Case No.14/2017 suffering

imprisonment for 10 years with fine under Sections 376, 363, 366 (A), 506 of the Indian Penal Code read with Section 3 (A), 4 (5), (j) (2) 65 (1), 6 POCSO Act, 2012, it would be useful for our reference to refer Rules 4, 12 and 21 of the Rules of 1959. The provisions reads thus :

“4. Eligibility for furlough :- All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough.

4 (12) - Prisoners who are considered dangerous or have been involved in serious prison violence like, assault, outbreak, riot, mutiny or escape, or who have been found to be instigating the serious violation of prison discipline, smuggling of narcotic and psychotropic substances including convicted under Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), rape or rape with murder, attempt to rape with murder and foreigner prisoners (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section).

4 (21) - Those involved in sexual offences against minor and human trafficking.”

7. In nearly identical circumstance, the Division Bench in its order dated 23.3.2021 was pleased to observe in para 3 of this order, as under :

“With the assistance of learned Advocate for the petitioner and learned A.P.P., we have gone through the judgment passed in Special (POCSO) Case No.217/2014, dated 04.11.2019, by which the petitioner is convicted for the offence punishable under Sections 302, 376 and 201 of the Indian Penal Code. According to us,

the impugned order, rejecting the claim of the petitioner for grant of furlough leave, cannot be faulted inasmuch as per Rule 4 (12) of the Rules of 1959, the petitioner is not eligible for grant of furlough leave. Apart from this, we find that the victim was minor and therefore, as per Rule 4 (21) of the Rules of 1959 also the petitioner is not eligible for grant of furlough leave.”

8. Considering all these aspects, we are of the opinion that the respondent was justified in passing the order dated 19.10.2020. The petition thus being merit-less deserves to be dismissed and the same is accordingly dismissed.

JUDGE

JUDGE