

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

CRIMINAL WRIT PETITION NO.763/2021

Shravankumar @ Rahul Dhanaram Sharma,
Convict No.10516, Aged about 38 years,
Presently at Central Prison, Nagpur.

... Petitioner

VERSUS

Jail Superintendent,
Nagpur Central Jail, Nagpur.

... Respondent

Mr. Mir Nagman Ali, Advocate for petitioner.
Mrs. Nandita Tripathi, APP for State.

CORAM : M.S. SONAK & PUSHPA V. GANEDIWALA, JJ.
DATE : 23-11-2021.

ORAL JUDGMENT : (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. Order of rejection of emergency parole to the petitioner is challenged in this petition. The petitioner is undergoing sentence of imprisonment for 10 years and presently lodged at Central Prison, Nagpur for the offences punishable under Sections 376, 323 and 506 of the Indian Penal Code. It is stated that the petitioner has undergone

approximately five years of imprisonment and he has never been released on parole or furlough leave. The petitioner filed an application for grant of emergency parole and the same came to be rejected vide impugned order dated 27-06-2021 mainly on the ground that the petitioner is not eligible for grant of emergency parole as he has never been released on parole or furlough.

3. The respondent-State in their affidavit-in-reply opposed the application mainly on the ground that in the present situation all precautionary measures are being followed by the Prison Authority for COVID-19 pandemic.

4. We have considered the rival submissions.

5. 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. Learned Counsel Mr. Mir Nagman Ali appearing on behalf of the petitioner has rightly cited the judgment of the Co-ordinate Bench of this Court (Coram- Sunil B. Shukre and Avinash G. Gharote, JJ.) 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."

6. This Court in the aforesaid order while remanding back the matter for fresh 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.

7. In the instant case, the record reveals that the application for emergency parole came to be filed by the petitioner on 08-06-2021 and the same came to be rejected vide order dated 24/27-06-2021 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 fresh 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.

8. Thus, we allow the Writ Petition. The impugned order dated 27-06-2021 passed by the respondent is hereby quashed and set aside. The matter is remanded back to the respondent 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.

9. Rule is made absolute in the aforesaid terms.

(Pushpa V. Ganediwala, J.)

(M.S. Sonak, J.)