

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH AT NAGPUR**  
**CRIMINAL WRIT PETITION NO.800 OF 2021**

Shri Dilip s/o Vishnu Pawar,  
C-5338, Aged Major, Age-41 years  
Occ: Nil, (Presently in Central Prison  
Amravati)

**...PETITIONER**

**...V E R S U S...**

1. State of Maharashtra,  
Through Superintendent of Jail,  
Central Jail, Amravati.
2. Divisional Commissioner,  
Amravati Division, Amravati.
3. The Deputy Inspector General of Prison,  
Eastern Region, Nagpur.

**...RESPONDENTS**

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Shri Raju Kadu, Advocate for petitioner.  
Smt. M.A. Barabde, A.P.P for respondents.  
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**CORAM:- M.S. SONAK AND PUSHPA V. GANEDIWALA, JJ.**  
**DATE :- 21<sup>st</sup> DECEMBER, 2021**

**ORAL JUDGMENT : (PER: PUSHPA V. GANEDIWALA, J.)**

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

2. The petitioner, by way of present writ petition under Article 226 of the Constitution of India, is challenging the order dated 04.06.2021, 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, 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 395 of the Indian Penal Code (for short "IPC"). In terms of Rule 4(2) of the Prison Rules, the prisoners convicted for the offence punishable under Sections 392 to 402 of the IPC are not eligible for furlough or parole leave with the rider that the prisoner may be eligible for parole after completion of stipulated sentence in the respective sentence. 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 395 of IPC.

4. Learned counsel Shri Raju Kadu appearing for the petitioner stated that the respondent no.1 without considering the notification dated 08.05.2020 rejected the application for emergency parole. Learned counsel points out that the emergency parole leave granted to co-accused Sitaram Vasant Savant by this Court vide order dated 06.05.2021 in Criminal Writ Petition No.344 of 2021. In support of his submission, learned counsel relied on the notifications issued by State of Maharashtra on 08.05.2020 and 13.11.2020 with regard to grant of emergency parole to the inmates of the jail.

5. *Per contra*, learned Additional Public Prosecutor, Smt. M. A. Barabde, 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 at Amravati Central 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 as per the notification dated 16.04.2018.

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 a decision 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 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.

10. In the instant case, the record reveals that the application for emergency parole came to be filed by the petitioner on 24.05.2021 and the same came to be rejected vide order dated 04.06.2021 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.

11. Thus, we allow the Writ Petition. The impugned order dated 04.06.2021 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

The rule is made absolute. There shall be no order for costs.

**(Pushpa V. Ganediwala, J.)**

**(M.S. Sonak, J.)**

*Wagh*