

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 21 OF 2022

Rukayya w/o Rashid Shaikh
(wife of convict), age: 29 years,
Occ: Household, R/o Farola,
Tq. Paithan, District Aurangabad.

Petitioner

Versus

01 The State of Maharashtra,
through its Secretary,
Home Department,
Mantralaya, Mumbai-400 032.

02 The Superintendent of the
Open Prison, at Paithan,
District Aurangabad.

Respondents

Mrs. Sharada P. Chate, advocate for the petitioner
Mr.s. P. V. Diggikar, APP for Respondents.

**CORAM : V. K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 27th January, 2022.

ORAL JUDGMENT (Per Sandipkumar C. More, J.):

1 Rule. Rule made returnable forthwith and by
consent, heard finally at admission stage.

2 By way of this Criminal Writ Petition, the petitioner is seeking a direction to Respondent No.2 to release her husband Shaikh Rashid Shaikh Abdul Gaffur i.e. Convict No. C-5345 on emergency parole leave as per Notification dated 08.05.2020, by quashing the order dated 15.12.2021, passed by Respondent No.2, under which, the aforesaid leave has been rejected.

3 According to the petitioner, her husband i.e. convict Shaikh Rashid is convicted for the offence punishable under Section 302 read with 34 of the Indian Penal Code vide judgment and order dated 30.07.2021, passed by the Additional Sessions Judge-III, Aurangabad and he is sentenced to suffer imprisonment for life. The petitioner's husband has presently served sentence of more than ten years and five months without remission. As such, it is claimed by the petitioner that her husband is entitled for release on emergency parole leave, as mentioned above.

4 The learned Counsel for the petitioner submits

that as per the judicial pronouncement of this Court (**Coram: T. V. Nalawade and S. D. Kulkarni, JJ**) in Criminal Writ Petition No. 571 of 2020, decided on 30.06.2020, in the case of **Kavita w/o Dilip Baviskar Vs. State of Maharashtra**, the issue of rejecting leave applications of the convicts, in terms of the Notification dated 08.05.2020, issued by the State Government in the backdrop of outbreak of Covid-19 pandemic situation, no more survives especially when this Court, in the aforesaid judgment and in various subsequent cases thereafter, has interpreted the condition laid down in the aforesaid Government Notification and held that the said condition is to ensure that the prisoner/convict should return to the jail on his own in time after the emergency parole period is over.

5 The learned Counsel for the petitioner also submits that rejection of emergency leave of the convict, even though there are less number of inmates in the Open Jail at present, is not at all proper, since it cannot be ignored that most of the intimates in the Open Jail have been released on

emergency parole leave and, therefore, there is no reason for the Respondent-authorities to discriminate the husband of the petitioner on the ground that there are less number of intimates in the Open Jail at present i.e. 33 as against the capacity of 500 inmates in the Open Jail.

6 It is significant to note that in terms of the Notification dated 08.05.2020, issued by the State Government in the backdrop of outbreak of Covid-19 pandemic situation, the Respondent-authorities have rejected so many leave applications solely on the ground that in terms of the said Notification, the prisoners ought to have availed either furlough or parole leave in the past and that such prisoners ought have returned to the Jail in time on such last occasions. Further, the Respondent-authorities have also rejected the leave applications of the convicts/prisoners on the ground that there are less number of inmates present in the Open Jail as compared to the total capacity of 500 inmates in the Open Jail.

7 The learned A. P. P., appearing on behalf of the Respondent-authorities, though has opposed the petition, but submitted that this Court may pass appropriate order in view of the aforesaid judgment of this Court in the case of **Kavita w/o Dilip Baviskar Vs. State of Maharashtra** (*supra*) and the subsequent judgments in various other cases.

8 We have gone through the judgment of this Court in the case of **Kavita w/o Dilip Baviskar Vs. State of Maharashtra** (*supra*), In paragraphs no. 4 and 5 of the said judgment, this Court has made the following observations:

“4 In the notification dated 8th May 2020, the State Government has given direction to the Jail Authority to see that the prisoners, who are behind the bars, are released on emergency parole in view of the situation created by pandemic of Covid-19 virus. In the said notification, there is condition that the prisoner, who is otherwise eligible to get furlough or parole leave, can get the benefit of this notification, provided that in the past he was released from jail on furlough or parole leave on two occasions and on all the occasions,

he had surrendered in time.

5 Due to the aforesaid condition, peculiar and strange circumstance is created as against prisoner, like present petitioner, even if he has been actually behind the bar for more than 11 years. The petitioner was granted furlough leave only once and on that occasion he turned up in time. He did not avail furlough leave on other occasion and not claiming the furlough leave on other occasion cannot make him disentitled to claim the benefit of the aforesaid notification. The purpose behind putting such condition can be only to ensure that the prisoner will surrender in time after expiry of emergency parole period. There cannot be any other intention behind such a condition.”

9 Further, on perusal of the common judgment dated 09th March, 2021, passed by this Court (**Coram: V. K. Jadhav and M. G. Sewalikar, JJ.**) in Criminal Writ Petition No. 284 of 2021 along with group of writ petitions, it is clear that same view has been taken for quashing the impugned orders therein rejecting emergency parole leave.

10 We are in agreement with the view expressed in

the aforesaid judgments wherein it has been observed that the condition under the Notification dated 08.05.2020 is prescribed to ensure timely return of the prisoner, who has been granted emergency parole leave on account of outbreak of Covid-19. Further, it would be ridiculous to treat the said condition as condition barring the prisoners to apply for emergency parole leave for the reason that on earlier occasion, they were not released on parole or furlough leave. Further, the Respondent-authorities cannot make discrimination against the prisoner for the reason that he can very well stay in the Open Jail safely by maintaining social distance since there are less number of intimates at present in the Open Jail than the total capacity of inmates. The other inmates have already been granted emergency parole leave by giving benefit of the aforesaid Notification.

11 In view of the same, we are inclined to allow the present writ petition. Hence, we pass the following order:

(i) Criminal Writ Petition is hereby allowed.

(ii) The impugned order dated 15.12.2021, passed by Respondent No.2, rejecting emergency parole leave to the husband of the petitioner i.e. Shaikh Rashid Shaikh Abdul Gaffur (Convict No.C-5345), is hereby quashed and set aside.

(iii) The application filed by the petitioner's husband for emergency parole, under Government Notification dated 08.05.2020, stands allowed and petitioner's husband – Shaikh Rashid Shaikh Abdul Gaffur be released on emergency parole on usual terms and conditions within seven days from today.

(iv) Authenticated copy of this order be supplied to the learned Counsel for respective parties.

12 Rule is made absolute in the above terms.

(SANDIPKUMAR C. MORE)
JUDGE

(V. K. JADHAV)
JUDGE