

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

CRIMINAL WRIT PETITION NO. 494 OF 2022

Santosh Sadashiv Sonwane
(Convict No. C/5106),
age: 40 years, Occ: Nil,
R/o at present: Open District
Prison, Paithan,
District Aurangabad.

Petitioner

Versus

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

02 The Additional Director General
& Inspector General of Prisons
& Correctional Services,
Pune, Maharashtra.

03 The Superintendent,
Open District Prison, Paithan,
Vill-Paithan, District
Aurangabad.

Respondents

Mrs. S. P. Chate, advocate for the petitioner
Mr. S. D. Ghayal, APP for the Respondents.

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

DATE : 11th April, 2022.

ORAL JUDGMENT (PER V.K. JADHAV. J.):

1 Rule. Rule returnable forthwith. By consent, heard

finally at admission stage.

2 In terms of the notification dated 8.5.2020 issued by the State Government on the backdrop of outbreak of COVID-19 pandemic situation, the petitioner herein has filed leave application for emergency parole to the respondent authorities, however, the respondent authorities rejected the leave application by the impugned order solely on the ground that in terms of the said notification the petitioner ought to have availed either furlough or parole leave in the past and that the petitioner ought to have returned to jail in time on such last two occasions. It is further observed by the respondent authorities that the petitioner is presently in the open jail at Paithan and at present there are less number of inmates compared to the capacity of 500 inmates in the open jail.

3 Learned counsel for the petitioner submits that this issue is no longer *res integra* in view of the judicial pronouncement of this court (*Coram: T. V. Nalawade and Shrikant D. Kulkarni, JJ.) in criminal writ petition No. 571 of 2020* decided on *30.6.2020, (Kavita w/o Dilip Baviskar vs. State of Maharashtra)*, and thereafter in various cases, this court has interpreted the

conditions laid down in the aforesaid Government notification and held that the said condition is to ensure that the prisoner should return the jail on his own in time after emergency parole period is over. Learned counsel submits that even though there are less number of inmates in the open jail at present, however, it cannot be ignored that most of the inmates in the open jail came to be released on emergency parole leave and there is no reason for the respondent authorities to discriminate the petitioner for the reason that there are less number of inmates in the open jail at present, as compared to the capacity of open jail of 500 inmates.

4 Learned A.P.P., appearing for the respondent-authorities, has supported the order passed by the respondent authority by referring the conditions as laid down in the notification dated 8.5.2020.

5 We have carefully gone through the judgment and order passed by this Court in the case of ***Kavita w/o Dilip Baviskar vs. State of Maharashtra (supra)***. This court in para 4 and 5 of the said judgment 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."

6 We agree with the view expressed on earlier occasion by the Division Bench that said condition is prescribed to ensure

the timely return of the prisoner, who has been granted emergency parole leave on account of outbreak of Covid-19. It would be ridiculous to read the said condition as condition barring the prisoner to apply for emergency parole leave for the reason that on earlier occasion they were not released on parole or furlough leave. Apart from this, we agree with the submissions made by learned counsel for the petitioner that the respondent authorities cannot make discrimination as against the petitioner for the reason that the petitioner can very well stay in open jail safely by maintaining social distance, as at present less number of inmates are there in the open jail since others have been granted emergency parole leave by giving benefit of the aforesaid notification.

7 In view of above, we are inclined to allow this writ petition. Hence, we proceed to pass the following order:-

O R D E R

- I. Criminal Writ Petition is hereby allowed.
- II. Impugned order, rejecting emergency parole to the petitioner, is hereby quashed and set aside.

- III. Application filed by the petitioner for emergency parole under Government Notification dated 8th May, 2020, is hereby allowed.
- IV. The petitioner be released on emergency parole on usual terms and conditions within seven days from today.
- V. Rule made absolute in the above terms.
- VI. Authenticated copy of this order may be supplied to both the sides.

(SANDIPKUMAR C. MORE)
JUDGE

(V.K.JADHAV)
JUDGE

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