

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1404 OF 2021

Rabbiul s/o Rajjak Shaikh
(C-5341),
R/o At present Paithan Open
Prison, District Aurangabad

Petitioner

Versus

1. The State of Maharashtra
2. The Superintendent of the
Open Prison, at Paithan,
District Aurangabad.

Respondents

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Mrs. Sharda P. Chate, Advocate for the petitioner.
Mr. R.D. Sanap, A.P.P. for respondents.

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

DATE : 22-02-2022.

Judgment (Per Sandipkumar C. More) :

1. Rule. Rule made returnable forthwith. By consent of the parties, heard finally at the stage of admission.
2. The applicant herein has prayed for quashing and setting aside the order dated 13.10.2021 passed by respondent No. 2 i.e. Superintendent of Paithan Open Prison, District Aurangabad whereby his release on emergency parole

leave for 45 days is denied.

3. It appears that in view of the Government Notification dated 08.05.2020 issued by the State Government on the backdrop of outbreak of Covid-19 pandemic situation, the petitioner had filed leave application for emergency parole before the respondent Authorities. However, it appears on perusal of the order dated 13.10.2021 that the respondent Authorities found the petitioner not eligible for the emergency parole as the petitioner ought to have availed either furlough or parole leave in the past and ought to have returned to jail in time on such last two occasions. Emergency parole leave has also been denied by the respondent Authorities as there were less number inmates compared to the capacity of 500 inmates in the open jail at the relevant time.

4. Learned Counsel for the petitioner submits that the issue in respect of emergency parole as pointed out by the respondent Authorities 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 dated 30.06.2020 (Kavita Dilip Baviskar vs. State

of Maharashtra). Learned Counsel for the petitioner also pointed out that 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. It is further submitted 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 this petitioner for the reason that there are less number of inmates in the open jail at present.

5. On the other hand, learned A.P.P. supported the impugned order of respondent Authorities by referring the conditions as laid down in the Notification dated 08.05.2020.

6. We have carefully gone through the judgment and order passed by this Court in the case of Kavita Dilip Baviskar vs. State of Maharashtra (supra). This Court in para Nos.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 dis-entitled 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.”

7. Further, learned Counsel for the petitioner has also relied on the subsequent judgment of this Court (Coram : V.K. Jadhav and M.G. Sewlikar, JJ) dated 9th March 2021 in various criminal writ petitions mentioned therein wherein the earlier observation in the case of **Kavita Baviskar vs. State of Maharashtra** (supra) is upheld.

8. Therefore, having regards to the aforesaid observations, we are in agreement with the same. It would be

ridiculous to deny the petitioner an opportunity of having emergency parole or furlough leave on the grounds as mentioned in the impugned order dated 13.10.2021 in the light of the aforesaid observations. It is to be noted here 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 since at present less number of inmates are there in open jail specially when other inmates have been granted emergency parole leave by giving benefit of aforesaid notification.

9. In view of the above, we are of the opinion that the present writ petition can be allowed, and therefore, pass the following order.

ORDER

- (i) Criminal Writ Petition is hereby allowed.
- (ii) Impugned order dated 13.10.2021 passed by respondent No. 2 is hereby quashed and set aside. The application filed by petitioner for emergency parole under Government Notification dated 08.05.2020 stands allowed and he be released on emergency parole on usual terms and conditions within seven days

from today.

- (iii) Rule made absolute in the above terms.
- (iv) Authenticated copy of the order is allowed to both sides.
- (v) Criminal Writ Petition is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)

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