

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

CRIMINAL WRIT PETITION NO.32 OF 2022

Gourav Narendra Singh-C-5024
Aged about 35 years, Occ. Nil
Central Prison, Amravati

... Petitioner

-vs-

Superintendent of Prison,
Central Jail, Amravati,
Tah. And Dist. Amravati

... Respondent

Shri P. R. Agrawal, Advocate with Shri S. R. Jaiswal, Advocate for petitioner.
Ms Kalyani R. Deshpande, Additional Public Prosecutor for respondent.

CORAM : A. S. CHANDURKAR AND SMT M. S. JAWALKAR JJ.
DATE : March 16, 2022

Oral Judgment : (Per: A. S. Chandurkar, J.)

Rule. Rule made returnable forthwith and heard the learned counsel for the parties.

The petitioner seeks his release on parole under Notification dated 08/05/2020. The petitioner has been convicted under Sections 376 and 506 of the Indian Penal Code and is serving his sentence. On 20/05/2021 the petitioner moved an application for being released on parole under Notification dated 08/05/2020. This application came to be rejected on 29/05/2021. The order of rejection was challenged in Criminal Writ Petition No.699/2021. By the judgment dated 21/12/2021 this Court observed that the order of rejection on the ground that the petitioner had not been released

earlier was not sustainable and the condition with regard to prior release on parole would be applicable when such prisoner had been released earlier and had not returned to jail on the due date after such release. This Court therefore set aside the order dated 29/05/2021 and remanded the proceedings for fresh consideration in the context of the date of the petitioner's application dated 20/05/2021. On 31/12/2021 the petitioner's application came to be rejected by holding him ineligible for such release in view of Notification dated 16/04/2018. This order is under challenge in the present writ petition.

2. We have heard the learned counsel for the parties and we have perused the reply filed by the respondent. It is an admitted position that the petitioner has not been released earlier on emergency parole as permissible under Notification dated 08/05/2020. Therefore after realizing the entitlement of the petitioner for such release would be made out, the respondent No.1 instead of considering the Notification dated 08/05/2020 as directed by the order passed in Criminal Writ Petition No.699/2021 has taken into consideration the earlier Notification dated 16/04/2018 for rejecting the application. In the light of the clear directions issued by this Court in the earlier writ petition, it was not open for the respondent No.1 to have considered the Notification dated 16/04/2018. On this count the impugned order is liable to be set aside.

Our attention is invited to the orders dated 04/09/2021 and 03/01/2022 passed by the respondent No.1 thereby releasing other convicts by applying the Notification dated 08/05/2020 though they were also convicted under serious offences. The petitioner having sought his release by moving an application on 20/05/2021 and this Court having directed consideration of the same as per Notification dated 08/05/2020, the respondent was not justified in rejecting the application. We find that the petitioner has made out a case for his release on emergency parole under Notification dated 08/05/2020.

3. Accordingly the order dated 31/12/2021 is set aside. The petitioner is directed to be released on emergency parole as per Clause-2 (C) (ii) of Sub-rule (1) of Rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole) Amendment Rules, 2020. The respondent shall obtain necessary undertaking and surety from the petitioner and release him by imposing suitable terms and conditions. The petitioner shall thereafter report on completion of forty five days after his release.

Rule is made absolute in aforesaid terms with no order as to costs.

(Smt M. S. Jawalkar, J.)

(A. S. Chandurkar, J.)