

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

CRIMINAL WRIT PETITION NO. 755 OF 2021

Pawan Badri Sondiya
Aged about 46 years
R/o Presently detained in Central Prison,
Nagpur, Tah & District Nagpur.
Convict No.C-9955

... PETITIONER

---VERSUS---

The State of Maharashtra,
Through the Superintendent of Prison,
Central Prison, Nagpur,
Tah. And District Nagpur.

...RESPONDENT

Shri A.A. Pannase, Advocate for (appointed) petitioner.
Ms N.R. Tripathi, Additional Public Prosecutor for respondent.

**CORAM : V. M. DESHPANDE AND
AMIT BORKAR, JJ.**

DATE : 11th APRIL, 2022.

JUDGMENT : (PER - AMIT BORKAR, J.)

1. Heard.
2. **Rule.** Rule made returnable forthwith.
3. By this writ petition under Articles 226 and 227 of the Constitution of India the petitioner is challenging impugned order dated 26.06.2021 passed by the respondent rejecting the emergency parole of the petitioner.

4. The petitioner is a convict for the offence under Sections 376(2)(f), 511 and 354 of the Indian Penal Code. On the date of filing of application, the petitioner had undergone imprisonment for period of 3 years and 10 months.

5. The petitioner on 07.06.2021 applied for grant of emergency parole before the respondent. The said application has been rejected by respondent on 26.06.2021. The said order is the subject matter of challenge in this writ petition. In pursuance of notice issued by this Court, the respondent has filed reply stating that the petitioner has been convicted for the offence punishable under Section 376, hence he is not entitled for being released on parole and furlough leave as per Rule 4 (12) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 as amended in the year 2018.

6. We have carefully considered the impugned order and the reply filed by the respondent. The principal reason for rejecting the emergency parole leave application of the petitioner is that the petitioner is not eligible for being released on emergency parole as he has been convicted of offence under Section 376 of the Indian Penal Code.

8. On careful reading of Rule 19(1)(C), it appears that all prisoners are eligible for regular parole unless they are

disqualified under the proviso as contemplated by Rule 19(1)(C) (ii). The coordinate Bench of this Court had occasion to consider the similar situation, wherein the coordinate Bench of this Court in the case of **Baburao Marotrao Dakhore Vs. State of Maharashtra** reported in **2017 (4) BCR (Cri.) 701** had taken a view that the analogy of regular parole cannot be applied to the request made under the provisions of Rule 19(1)(C) as the said provision is self-operative.

9. Learned Additional Public Prosecutor invited our attention to the judgment of this Court in Criminal Writ Petition No.146 of 2021, wherein the Division Bench of this Court in paragraphs 6 and 7 has observed as under:

“6. It is also necessary to note that in Suo Motu Writ Petition (Civil) No.3/2020, while considering the issue about extension of the period of limitation, the Hon'ble Apex Court has observed as under :-

“Though, we have not seen the end of the pandemic, there is considerable improvement. The lockdown has been lifted and the country is returning to normalcy. Almost all the Courts and Tribunals are functioning either physically or by virtual mode. We are of the opinion that the order dated 15.03.2020 has served its purpose and in view of the changing scenario relating to the pandemic, the extension of limitation should come to an end.”

In view of the above, it would therefore be necessary, for the Superintendent of Jail to, from time to time, assess the Covid-19 situation in the Prisons; ascertain the number of Covid-19 patients in the Prison; determine whether they could be kept in isolation; whether social distancing norms can be safely followed considering the number of Covid-19 patients; what is the threat perception to the Non-Covid patients; whether there is requirement of decongestion of the Prison; in case there is requirement of decongestion, the number of prisoners which would be required to be released, to ensure social distancing norms and avoiding spread of the virus; the category of prisoners who can be released, depending upon the Covid-19 situation in the locality, to which such released prisoners are expected to go.

7. It is only when, the Superintendent of Prisons, is of the considered opinion, depending upon the factors enumerated above and such other factors, as he thinks necessary to be considered, that there is need for decongestion of the Prisons to avoid the spread of the Covid-19 virus, that it would be permissible for a convicted prisoner to move an application, for considering his release on account of the perceived threat of spread of Covid-19 virus. We are constrained to make the above observations, for the reason, that an impression has been created that a release on Covid-19 parole, is a matter of right, which it is not.”

10. In the light of observations made by the coordinate Bench of this Court, which are binding on us, we pass the similar order, which is passed in Criminal Writ Petition No.146 of 2021.

11. We therefore pass the following order:

(i) The impugned order dated 26.06.2021 is quashed and set aside.

(ii) The respondent shall decide the emergency parole application of the petitioner in the light of observations made by this Court in the case of Ayyaz Khan Zabaz Khan Vs. Divisional Commissioner, Division Amravati, Amravati and another (Criminal Writ Petition No.146 of 2021).

(iii) Shri A.A. Pannase, learned counsel being appointed through High Court Legal Services Sub-Committee, is entitled for his professional fees and we quantify at ₹2,500/-

Rule in above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE

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