

CRIMINAL WRIT PETITION NO. 896 OF 2021

---VERSUS---

- Shri A.S. Siddiqui, Advocate for (appointed) petitioner.
Shri M.K. Pathan, Additional Public Prosecutor for respondents.

DATE : 11th APRIL, 2022.

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 the order dated 16.08.2021 refusing to release the petitioner on emergency parole.

4. The petitioner is convict under Section 302 read with Section 34 of the Indian Penal Code (IPC) and sentenced to undergo life imprisonment. The petitioner is also convicted offence under Sections 307, 397, 452 and 460 of the IPC.

5. The petitioner on 06.06.2021 applied for his release on emergency parole, which has been rejected by respondent no.2 by its order dated 16.08.2021.

6. The petitioner has therefore challenged the said order by way of present writ petition. This Court issued notice to the respondents, in pursuance of which, the respondent no.2 has filed reply stating that the petitioner having been convicted for the offence punishable under Section 394 of IPC is not eligible for release on emergency parole.

7. Insofar as the eligibility of the petitioner is concerned, as we have already held that the language of Rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 entitled all prisoners subject to disqualification mentioned in the said Rules. 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 occasion to interpret the Rule 19 as was in existence in the said year. The coordinate Bench of this Court held that insofar as release of prisoners on emergency

parole is concerned, the eligibility prescribed under Rule 4 of the Rules of 1959 are not attracted.

8. We are of the view that insofar as the refusal of respondent no.2 to release the petitioner on the ground of petitioner having been convicted under Section 394 is concerned, the petitioner is eligible for being released the petitioner under Rule 19 of the Rules of 1959.

9. Shri M.K. Pathan, 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 16.08.2021 is quashed and set aside.

(ii) The respondent no.2 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.S. Siddiqui, 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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