

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

CRIMINAL WRIT PETITION NO. 55 OF 2022

Asghar S/o. Yusuf Mukaddam,
Age : 59 years, Occ.: Prisoner
Convict No. C-8552,
At present lodged in Central Prison,
Nagpur as convict No.C-8552.PETITIONER

---- **VERSUS** ----

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai – 32.
2. The Divisional Commissioner, Nagpur.
Office at Commissioner Office, Nagpur.
3. The Deputy Inspector General of Police
(Prison), East Division,
Central Prison, Nagpur,
Nagpur.
4. The Superintendent of Prison,
Central Prison, Nagpur,
Wardha Road, Nagpur. RESPONDENTS.

Mr. M. M. Chaudhari, Advocate for the Petitioner.
Mr. T. A. Mirza, A.P.P for the Respondents/State.

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

DATE : 31.03.2022.

JUDGMENT : [PER: AMIT BORKAR, J.]

1. Heard.

2. Rule.

3. By this Writ Petition under article 226 of the Constitution of India, the petitioner is challenging order dated 28.08.2020 and also letter dated 26.05.2021 issued by the respondent No.4 refusing emergency parole to the petitioner. The petitioner is also seeking direction against the respondents to include the class/category of prisoners who has undergone substantial sentence or had served half of their total sentence for entitlement of emergency parole leave under Rule 19(1)(C) of the Maharashtra Prisons (Mumbai Furlough and Parole) (Amended Rules, 2020) (hereinafter referred to as “the said Rules”) and to extend the benefit of emergency parole under Rule 19(1)(C) of the said Rules to the petitioners who had reported in time earlier while they were released on parole or furlough.

4. The petitioner is a convict for the case famously known as Bombay Blast Case in 1993 and was arrested on 19.03.1993 and is in jail since the said date. The petitioner has been convicted for following offences :

Sr. No.	Under Section	Punishment
1.	3(3) of TADA Act 1987, 120(b) IPC	Death Sentence with fine Rs.25,000/-
2.	3(3) of TADA Act	9 years imprisonment with fine Rs.50,000/- i/d 1 year imprisonment.
3.	3(2)(1) of TADA Act 1987	Death Sentence with Fine of Rs.25,000/-
4.	302 r/w 34 of IPC	Death Sentence with Fine of Rs.25,000/-

5.	307, 34 of IPC	Life imprisonment with fine Rs.50,000/- i/d 1 year imprisonment.
6.	326 R/w 34 of IPC	10 years imprisonment with fine Rs. 50,000/- i/d 1 year imprisonment.
7.	324, 34 of IPC	3 years imprisonment.
8.	435, 34 of IPC	7 years imprisonment with fine Rs. 50,000/- i/d 1 year imprisonment.
9.	436, 34 of IPC	7 years imprisonment with fine Rs. 50,000/- i/d 1 year imprisonment.
10.	3 Explo. Act	10 years imprisonment with fine Rs.25,000/- i/d 6 months imprisonment.
11.	4(6) Explo. Act	7 years imprisonment with fine Rs.25,000/- i/d 6 months imprisonment.
12.	9(b) of Explo. Act	2 years imprisonment.
13.	3(3) TADA Act 1987	7 years imprisonment with fine Rs.25,000/- i/d 6 months imprisonment.
14.	3 & 4 r/w 6 Explo. Act	5 years imprisonment with fine Rs. 25,000/- i/d 6 months imprisonment.

5. The petitioner, against the order of conviction, filed appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court directed that the petitioner along with other accused shall suffer imprisonment for life until their death.

6. The petitioner on 19.08.2020 and 18.05.2021 filed an application before the respondent No.4 for releasing him on emergency parole under Rule 19(1)(C) for a period of 45 days. The said application came to be rejected by impugned order dated 28.08.2020.

7. The petitioner has therefore filed present petition challenging the said order and seeking the relief as stated herein

above. This Court issued notice to the respondents and the respondent No.4 has filed detailed reply placing reliance on the Full Bench judgment of this Court in the Case of ***Pintu Uttam Sonale Vs. State of Maharashtra*** reported in ***2020 (6) Mh.L.J. 627***. It is stated that since the petitioner has been convicted for offences under Special Acts, the case of the petitioner falls under the proviso of Rule 19(1)(C)(ii) of the Rules of 1959.

8. We have carefully considered the impugned order and in the light of Full Bench judgment of this Court, we are of the considered view that there is no illegal exercise of power by the respondent No.4 while rejecting the emergency parole leave application of the petitioner. The Full Bench of this Court in ***Pintu Sonale*** (*supra*) has held as under :

“19. In our opinion the language of the proviso clearly sets out that the provisions sub-rule (C) of Rule 19(1) of the 1959 Rules, would not apply to the prisoners convicted for various economic offences or bank scams or offences under some Special Acts (other than IPC) and some of which are illustratively mentioned by using the word "like" when the proviso refers to the Special Acts namely MCOC, PMLA, MPID, NDPS, UAPA etc. This illustrative reference is further qualified by use of the word "etc" which indicates that the reference to these Special Acts is not exhaustive. The proviso using the words "like" and "etc" is a significant indication of the legislative intent. The intention and object to insert the proviso appears to be quite clear that the provisions of the emergency parole as introduced by sub-rule (C) would not apply to the prisoners convicted of serious

offences under the different Special Acts and who fall within the category as specified in sub-rule C(ii)."

9. In so far as the remaining prayers to include the class/category of prisoner who has undergone the substantial sentence or had served half of their total sentence for entitlement of emergency parole leave under Rule 19(1)(C) of the Maharashtra Prisons (Mumbai Furlough and Parole) (Amended Rules, 2020) is concerned, the said relief falls within the purview of policy decision to be taken by the State Government. The petitioner has no legal right to seek directions against the State Government to frame a policy in a particular manner. The writ of mandamus cannot be issued against the State to frame policy in a particular manner. The principle of separation of power squarely applies in such cases where the Courts cannot direct either legislature or executive to frame a particular policy. Even otherwise, we are satisfied that the Sub-Rule 2 of the Rule 19(1)(C) of the said Rules was framed in the emergence situation of Covid-19. The said Rule created rights in favour of only those prisoners, who were covered under Rule 19(1)(C) of the said Rules. It is within the realm of policy decision to provide who are entitled for the benefit of the parole or furlough. A prisoner cannot, as of right, seeks a mandamus to frame Rules in a manner which is suitable for him.

10. There is no merit in the petition. The petition is therefore dismissed.

11. Rule is discharged. Pending application(s), if any, stand(s) disposed of.

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