

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

CRIMINAL WRIT PETITION NO. 376 OF 2023

Wasim Khan Azim Khan, Aged about 40
years, Convict No.C/9405, presently at
Central Prison, Nagpur

... PETITIONER

VERSUS

The Superintendent Central Prison,
Nagpur.

... RESPONDENT

Shri M.N. Ali, Advocate for the petitioner.
Smt. Nandita Tripathi, A.P.P. for the respondent/State.

CORAM : VINAY JOSHI AND VALMIKI SA MENEZES, JJ.
DATED : 09.06.2023.

JUDGMENT : (Per : Vinay Joshi, J.)

RULE. Rule made returnable forthwith. By consent, the petition is taken up for final disposal.

2. The petitioner has applied for grant of emergency parole on account of death of his mother for the period of 14 days. Initially, emergency parole was granted vide order dated 06.05.2023 for the period of 3 days with police escort. Later on, the said order was

modified by which emergency parole for 1 day was granted without police escort charges. Being aggrieved by these orders, the petitioner has approached to this Court by stating that the Authority fail in serious error in denying the emergency parole for the period of 14 days as has been claimed. It is submitted that Rule 19(1)(A) of the Prisons (Bombay Furlough and Parole) Rules, 1959 (the Rules of 1959) authorizes the Authority to grant emergency parole, initially for 7 days with the provision of extension for 7 days. However, the Authority without assigning any reason, denied the parole for 14 days. Moreover, it is argued that without assigned any reason, the petitioner has been directed to avail emergency parole in police escort.

3. The respondent/State resisted the petition by filing the affidavit in reply. It is contended that the petitioner has committed serious offence and is sentenced to suffer imprisonment for life till the remainder of natural life. The Authority has considered the reason for emergency parole and granted the same for three days to meet the purpose. It is stated that considering the poor financial condition, the escort charges have been waived and therefore, no interference is called.

4. It is not in dispute that the petitioner has been convicted in

Sessions Case No.22 of 2015 for various offences including offence punishable under Section 376D of the Indian Penal Code and sentenced to suffer imprisonment for life till the reminder of natural life. There is no dispute that the petitioner's mother died on 06.05.2023 and for the reason of attending the death rituals, the petitioner has applied for emergency parole.

5. Learned Counsel appearing for the petitioner would submit that seriousness of crime and the extent of punishment except death is no criteria to curtail the period of emergency parole as specified under Rule 19(1)(A) of the Rules of 1959. Moreover, the Authority has not assigned reason for imposing restriction of police escort. In support of said contention the petitioner heavily relied on the decision of this Court in case of *Dilip s/o Sopan Pawar vs. State of Maharashtra and anr. (Criminal Writ Petition No.354 of 2019) dated 18.02.2019*. Particularly, our attention has been invited to paragraph 7 of the said decision which reads as below :

“Two issues arise in these Petitions. We have already quoted clause (A) of Sub-Rule (1) of Rule 19 of the said Rules of 1959. If this provision is considered in the context of Sub-Rule (2) of Rule 19 which deals with the regular parole, even if a prisoner attracts a disqualification for grant of

furlough as per Rule 4 of the said Rules of 1959, on that ground, emergency parole cannot be denied. Sub-Rule (2) of Rule 19 specifically states that all the prisoners who are eligible to grant of furlough, shall be eligible for the regular parole. Thus, if a prisoner is dis-entitled to furlough by virtue of the disqualifications laid down in Rule 4, he is dis-entitled to regular parole under Sub-Rule (2) of Rule 19. Such a condition is not incorporated in Sub-Rule (1) of Rule 19 which deals with the emergency parole.”

6. The said position has not been denied by the learned A.P.P. We can quite see that except the rider of convict being foreigner and death sentence has been imposed, no other restriction has been imposed for grant of emergency parole. The restrictions imposed for grant of regular parole would not apply for grant of emergency parole as observed by this Court in above decision, and therefore, the ground about seriousness of offence, is insignificant.

7. On the point of period of emergency parole, it has been submitted that without assigning any reason, the Authority has curtailed the period to one day from 14 days provided by the Rules, 1959. In above referred decision, this Court took a view that when the power are vested with the Authority to grant emergency parole for 14 days, unless reasons are recorded, the period cannot be curtailed.

Moreover, it is observed that the Authority must state the reasons for providing the police escort.

8. We have examined the impugned orders, wherein we are unable to find a single reason about curtailment the period or grant of police escort. Moreover, the reply affidavit states that the police verification report was in favour of the petitioner – convict. In absence of reasons, we find no justification for curtailment of parole period and the order of police escort. In view of amended Rule 19(1)(A) of the Rules 1959, the emergency parole shall be initially for 7 days, which can be extended by further 7 days. Thus, the petitioner is entitled for the emergency parole of 7 days without extension.

9. It is the petitioner's contention that the death rituals are fixed from 11.06.2023 and thus, there is no time to direct the Authority to reconsider the application, since there are two days holiday from tomorrow.

10. Considering the above situation, we hereby passed the following order :

(a) The petition is allowed and disposed of.

(b) We hereby modified the orders dated 06.05.2023 and

26.05.2023 passed by the concerned Authority.

- (c) We direct that the petitioner Wasim Khan Azim Khan shall be released on emergency parole for the period of 7 days with a provision of extension, to be decided at the discretion of the Authority.

11. Rule is made absolute. No order as to costs.

12. Registry of this Court shall communicate this order immediately to the respondent.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)

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