



Judgment

5 wp 379.24

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

CRIMINAL WRIT PETITION NO. 379/2024 with
CRIMINAL WRIT PETITION NO.385/2024 with
CRIMINAL WRIT PETITION NO.439/2024 with
CRIMINAL WRIT PETITION NO.495/2024 with
CRIMINAL WRIT PETITION NO.502/2024 with
CRIMINAL WRIT PETITION NO.582/2024 with
CRIMINAL WRIT PETITION NO.740/2024 with
CRIMINAL WRIT PETITION NO.762/2024 with
CRIMINAL WRIT PETITION NO.773/2024 with
CRIMINAL WRIT PETITION NO.795/2024 with
CRIMINAL WRIT PETITION NO.796/2024 with
CRIMINAL WRIT PETITION NO.815/2024 with
CRIMINAL WRIT PETITION NO.753/2024

CRIMINAL WRIT PETITION NO. 379/2024

Raju @ Mukesh Poonamchand Patel
(C-4864), aged about 42 yrs., Occ. NA,
R/o. Bagmer, near Ram Mandir,
Tah. Pandhana, Dist. Khandwa (M.P.)

... PETITIONER

VERSUS

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Jail,
Central Prison, Amravati.

... RESPONDENTS

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Ms. Ratna Singh, Advocate for petitioner.
Mr. Nikhil Joshi, APP for respondent Nos. 1 & 2.

with

CRIMINAL WRIT PETITION NO.385/2024

Nilesh Ganpat Fushe (C-6124)
aged about 30 yrs., Occ. NA,
R/o. Post Sungaon, Tah. Jalgaon-Jamod,
Dist. Buldhana.

... **PETITIONER**

VERSUS

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Jail,
Amravati Central Prison, Amravati.

... **RESPONDENTS**

Ms. Ratna Singh, Advocate for petitioner.
Mr. M. K. Pathan, APP for respondent Nos. 1 & 2.

with

CRIMINAL WRIT PETITION NO.439/2024

Golu @ Salim Khan Gaffar Khan Pathan (C-5788)
aged about 28 yrs., Occ. NA,
R/o. Nehru Nagar, Babhugaon,
Tah. Babhugaon, Dist. Yavatmal.

... **PETITIONER**

VERSUS

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Superintendent of Jail,
Amravati Central Prison, Amravati.

... RESPONDENT

Ms. Ratna Singh, Advocate for petitioner.
Mr. N. Joshi, APP for respondent/State

with

CRIMINAL WRIT PETITION NO.495/2024

Amol Vijay Deshmukh (C-5925),
aged about 38 yrs., Occ. NA,
R/o. Palshi, Tah. Sengaon,
Dist. Hingoli.

... PETITIONER

VERSUS

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Jail,
Central Prison, Amravati.

... RESPONDENTS

Ms. Ratna Singh, Advocate for petitioner.
Mrs. S. Kolhe, APP for respondent Nos. 1 & 2.

with

CRIMINAL WRIT PETITION NO.502/2024

Vijay Bhimrao Deshmukh (C-5924)
aged about 62 yrs., Occ. NA,
R/o. Palshi, Tah, Sengaon,
Dist. Hingoli.

... PETITIONER

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VERSUS

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Jail,
Central Prison, Amravati.

... **RESPONDENTS**

Ms. Ratna Singh, Advocate for petitioner.
Mrs. S. Kolhe, APP for respondent Nos. 1 & 2.

with

CRIMINAL WRIT PETITION NO.582/2024

Santosh Janardan Pagrut (C-687),
aged about 45 yrs., Occ. NA,
R/o. Ghusar, Tah. & Dist. Akola.

... **PETITIONER**

VERSUS

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Jail,
Morshi Open Prison, Amravati.

... **RESPONDENTS**

Ms. Ratna Singh, Advocate for petitioner.
Mrs. S. Kolhe, APP for respondent Nos. 1 & 2.

with

CRIMINAL WRIT PETITION NO.740/2024

Dhiraj Arunrao Shinde C-205 (6099)
aged about 38 yrs., Occ. NA,
R/o. Paratwada, Tah. Achalpur,
Dist. Amravati.

... PETITIONER

VERSUS

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Jail,
Central Prison, Amravati.

... RESPONDENTS

Ms. Ratna Singh, Advocate for petitioner.
Mr. A. Ghogare, APP for respondent Nos. 1 & 2.

with

CRIMINAL WRIT PETITION NO.762/2024

Prafulla Baburao Sarode C-872(6068)
aged about 46 yrs., Occ. NA,
R/o. Manik Chowk, Sindkheda,
Dist. Buldhana.

... PETITIONER

VERSUS

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Open Prison,
Morshi, Dist. Amravati.

... RESPONDENTS

Ms. Ratna Singh, Advocate for petitioner.
Mrs. N. Tripathi, APP for respondent Nos. 1 & 2.

with

CRIMINAL WRIT PETITION NO.773/2024

Rahul Babanrao Bhad (C-5889)
aged about 30 yrs., Occ. NA,
R/o. Hantoda, Tah. Anjangaon Surji,
Dist. Amravati.

... **PETITIONER**

VERSUS

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Jail,
Central Prison, Amravati.

... **RESPONDENTS**

Ms. Ratna Singh, Advocate for petitioner.
Mrs. N. Tripathi, APP for respondent Nos. 1 & 2.

with

CRIMINAL WRIT PETITION NO.795/2024

Tushar Kiranrao Maskare (C-5971)
aged about 30 yrs., Occ. NA,
R/o. Tadni Purna, Chandur Bazar,
Dist. Amravati.

... **PETITIONER**

VERSUS

1. Divisional Commissioner,
Amravati, Dist. Amravati.

2. Superintendent of Jail,
Central Prison, Amravati.

... RESPONDENTS

Ms. Ratna Singh, Advocate for petitioner.
Ms. S. Dhote, APP for respondent Nos. 1 & 2.

with

CRIMINAL WRIT PETITION NO.796/2024

Dnyaneshwar Gangadhar Bhong (C-918)
aged about 45 yrs., Occ. NA,
R/o. Kaudgaon, Tah. Basmath,
Dist. Hingoli.

... PETITIONER

VERSUS

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Jail,
Morshi Open Prison, Morshi,
Dist. Amravati.

... RESPONDENTS

Ms. Ratna Singh, Advocate for petitioner.
Mr. U. R. Phasate, APP for respondent Nos. 1 & 2.

with

CRIMINAL WRIT PETITION NO.815/2024

Sanjay Tulshiram Bawankar (C-4756)
aged about 45 yrs., Occ. NA,
R/o. P.O. Kawtha Kadu,
Tah. Chandur Railway, Dist. Amravati.

... PETITIONER

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VERSUS

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Jail,
Central Prison, Amravati.

... RESPONDENTS

Ms. Ratna Singh, Advocate for petitioner.
Mr. A. Badar, APP for respondent Nos. 1 & 2.

with

CRIMINAL WRIT PETITION NO.753/2024

Pradip Mahadeorao Sahare,
aged about 35 yrs., R/o.Rajni,
Post Dorli (Bhandwalkar), Tah. Narkhed,
Dist. Nagpur. C/666, Open Prison, Morshi.

... PETITIONER

VERSUS

1. Divisional Commissioner,
Amravati, Dist. Amravati.
2. Superintendent of Jail,
Open Prison, Morshi, Dist. Amravati.

... RESPONDENTS

Ms. Sonali B. Khobragade, Advocate for petitioner.
Mr. M. K. Pathan, APP for respondent Nos. 1 & 2.

CORAM : VINAY JOSHI AND
ABHAY J. MANTRI JJ.

DATE : 14.10.2024.

ORAL JUDGMENT (PER VINAY JOSHI, J.) :

Heard.

2. **Rule.** Rule made returnable forthwith. Heard finally by consent of learned counsel appearing for the parties.

3. These bath of petition raises a common issue that the convict's parole/ furlough leave has been rejected primly on the ground of amended Rules 19(3)(C)(ii) of the Prisons (Bombay Furlough and Parole) Rules, 1959 ("Rules of 1959"). The said rule postulates that a prisoner shall be eligible for subsequent release on regular parole/furlough only after completion of one and half years of actual imprisonment to be counted from his last return.

4. Learned counsel appearing for applicant relied on the decision of this Court in case of **Amit s/o Gajanan Gandhi Vs. State of Maharashtra** in Criminal Writ Petition No.47/2023 decided on 24.01.2023, wherein the said issue has been exclusively dealt in para 7

and 8 of the decision which reads as below:

*“7. The only resistance is on account of the rider requiring petitioner to make him self eligible in terms of Rule 19(C) (ii) of the Prison Rules which concededly has not been complied with. Rule 19(C)(ii) has been substituted by notification dated 10.02.2022. Prior to notification, there was a similar proviso under Rule 19(2) making a condition of eligibility for regular parole of staying in Jail for the period of one year after expiry of his last release on emergency or regular parole. The said proviso to Rule 19(2) was subject matter of challenge before the Full Bench of this Court in case of **Kantilal Nandlal Jaiswal Vs. Divisional Commissioner, Nagpur, 2019(6) Mh.L.J. 186**, wherein the said proviso has been held to be violative to Articles 14 and 21 of the Constitution of India.*

8. We find that the newly introduced condition of Rule 19(2) (C)(ii) is having similar flavor which has been already dealt by the Full Bench of this Court. Full Bench in para 34 of the decision has expressed that there is no sense in not entertaining the urge for release earlier in peculiar facts. In case at hand, the petitioner has produced document to show that his wife is about deliver a child tomorrow (25.01.2023) and there is nobody in the family to take care. Considering the peculiar facts of the case, we are inclined to grant regular parole.”

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5. Apart, the learned counsel for petitioner would submit that in some of the cases, besides bar of Rule 19(3)(C)(ii) of the Rules of 1959, no other reason is assigned. As against this, the learned APP would submit that since the authority was much swayed by amended Rule 19(3)(C)(ii) of the Rules of 1959, therefore, the other grounds for rejection though discussed, have not been specified.

6. In view of law laid down by the Full Bench decision in case of Kantilal (*supra*) and the decision rendered by this Court in case of Amit (*supra*), the reason about amended Rule 19(3)(C)(ii) of the Rules of 1959 would not survive. The matter remains to scrutinize the application on rest of the grounds, if any including verification of the medical ground and on other general parameters.

7. In view of above, all petitions are partly allowed. We hereby quash and set aside the impugned orders passed by the authority in all above petitions. The petitioner, if desires, can produce additional documents in support of the cause canvassed for the parole to the Jail Superintendent within one week. On receiving the papers, the authority shall verify the

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same, consider the petitioner's eligibility on all parameters and decide those applications afresh within two weeks thereafter. We make it clear that Rule 19(3)(C)(ii) of the Rules of 1959 shall not be ground for rejection, if petition is rejected on said ground, necessary action of contempt would be initiated.

8. All petitions stand disposed of accordingly.

(ABHAY J. MANTRI J.)

(VINAY JOSHI, J.)