

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

(Through WhatsApp Video Conferencing)

...

CrI M no.01-A/2020

In CRA no.34/2018

Mushtaq Ahmad Peer

..... Petitioner(s)

Through : Mr M. M. Iqbal, Advocate

Versus

State of J&K and others

.....Respondent(s)

Through: Mr Mohsin Qadri, Advocate

CORAM: HON'BLE MR JUSTICE TASHI RABSTAN, JUDGE

ORDER
07.04.2020

1. This is an application, moved by appellant/applicant, seeking his release on parole/interim bail in view of COVID-19 (Coronavirus) outbreak.
2. Main Appeal, being CRA no.34/2018, challenging judgement and sentence is pending adjudication.
3. Objections have been filed by respondent Crime Branch in opposition to instant application, vehemently resisting parole/interim bail as acceding to respondent applicant does not fall in any category of prisoners whose case can be considered for release on parole in the aftermath of passing of the Supreme Court order dated 23rd March 2020 on spread of COVID 19 in jails. According to respondents, the medical procedure as required by applicant is being provided to him.
4. Heard and considered.
5. Learned counsel for appellant/applicant has stated that applicant has been convicted in terms of judgement, impugned in CRA no.34/2018, and is presently lodged at Central Jail Srinagar. He has

also averred that the Supreme Court has observed that to avert possible outbreak of transmission of Coronavirus coupled with the fact that jails in Kashmir are overcrowded, applicant deserves to be released.

6. Having regard to submissions made by learned counsel for applicant, the case of applicant does not fall under any of the categories given in the guidelines by the Supreme Court in *Suo Motu Writ Petition (C) no.01 of 2020 In Re: Contagion of Covid 19 Virus in Prisons*. The Supreme Court vide order dated 23rd March 2020 has directed that physical presence of all undertrial prisoners before the Courts must be stopped and recourse to video conferencing must be taken for all purposes. As regards overcrowding of prisons, the Supreme Court has directed constitution of High Powered Committees by each State/Union Territory, comprising of Chairman of the State Legal Services Committee, Principal Secretary (Home/Prison) by whatever designation is known as, and Director General of Prisons, for determining which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. While giving instance qua prisoners to be released in view of COVID 19, the Supreme Court has said that such prisoners could be considered for release, who have been convicted or are undertrial for offense for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum. Nevertheless, it has been made clear that it has been left open for the High Powered Committee to determine the category of prisoners who should be released, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider.

7. Government of J&K through Home Department, by Notification, bearing S.O. no.114 dated 29th March 2020, issued Jammu and Kashmir Suspension of Sentence Rules, 2020 (for brevity "*Rules of 2020*"). It says that competent authority would be Head of Prisons Department and parole means temporary release of a convicted prisoner for a short period to fulfill family/ social obligation and responsibility. There shall be, as provided under Rule 5, two types of parole to which a convict would be eligible. They are custody parole or emergency parole and regular parole. Custody parole, as envisaged under Rule 6, can be granted to a convict by an order in writing issued by Jail Superintendent under intimation to Head of Prisons Department and to an undertrial prisoner by the trial court concerned in the event of death of a family member of undertrial prisoner or marriage of a family member or serious illness of a family member or any other emergency with the approval of the range DIG Prisons. Rule 6 also envisages that the prisoners who have been convicted but their appeal is pending before the higher courts may also avail custody parole from the prison authority. Insofar as regular parole is concerned, the case of eligible prisoners shall be considered for regular parole by competent authority. Rule 9 enumerates conditions for consideration of applications for parole. Rule 10 says who shall be eligible for parole. Procedure for parole is coming forth from Rule 13. It provides for processing application for grant of parole, an application is to be submitted by the prisoner or his family members to the Jail Superintendent, who would verify grounds stated in application and make specific recommendations with regard to the grounds taken by the convict in the nominal role. Jail Superintendent will forward a copy of application to police station, where FIR was registered and also to the police station concerned of the last known address and where prisoner wishes to stay and the investigating agency of the case for their report. After fulfilment of requisites as enshrined in Rule 13, the parole case

would be forwarded to competent authority. The competent authority may, subject to the conditions as laid down in Rule 16 of the Rules of 2020, pass order for release of a prisoner.

8. Insofar as present case is concerned, it may not be out of place to mention here that in compliance to the Supreme Court order dated 23rd March 2020, the Union Territory of J&K has constituted a High Powered Committee, which deliberated on 31st March 2020 and issued several directions for release of prisoners to decongest the jails. The procedure laid down by the Committee provides that the cases for grant of interim bail would be dealt with either by the visiting judges (District & Sessions Judge/Additional District Judge/Chief Judicial Magistrate/ Judicial Magistrate First Class) in the jails, on the bail applications in the jail itself or alternatively by devising a mechanism of routing the bail applications through District Legal Service Authority (DLSA) to the courts convened especially for this purpose. All the Principal District and Sessions Judges, who are Chairman of district UTRCs of their respective district have been requested to comply with the directions of High Powered Committee with regard to undertrial prisoners and submit the report within one week for placing the same before the Committee on 10th April 2020.
9. Government of Jammu and Kashmir through Home Department has, in exercise of powers conferred under Subsection (5) of Section 432 of the Code of Criminal Procedure, 1973, vide Government Order No.100-Home of 2020 dated 2nd April 2020, authorized Director General of Police (Prisons), J&K, being competent authority in terms of Rules of 2020, to grant special parole for eight weeks, extendable for another eight weeks if lockdown qua COVID 19 by the Government continues with respect to categories of convicts enumerated therein. The Order provides that a person, who has been convicted in one case and has spent more than ten years (eight years

in case of woman) in jail, except the cases vis-à-vis militancy, NDPS Act, POCSO Act or offence against women or acid attack or foreign national, can be considered for grant of special parole. The cases of persons, who have been sentenced to imprisonment for three years with or without fine and conviction has been upheld by Appellate Court but revision against judgement by Appellate Court is pending before the High Court, can as well be considered for parole.

10.All that was and is required to be done by the Government in compliance to the Supreme Court directives, has been carried out.

11.In view of the above circumstances, it would be appropriate for applicant/appellant to avail the above remedy by approaching the High Powered Committee. In the event, applicant approaches the High Powered Committee, it shall consider and decide the application of applicant in accordance with the scheme/guidelines, laying down the categories for release of prisoners given the spread of COVID 19. Let such consideration be accorded and a decision taken within a period of one week from the date applicant approaches the High Powered Committee.

12.Present application is, accordingly, **disposed of**.

(Tashi Rabstan)
Judge

Srinagar

07.04.2020

Ajaz Ahmad, PS

Whether approved for reporting? Yes/No