

Bhogale

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION ASDB-LC-VC NO. 292 OF 2020

Milind Ashok Patil and Ors. .. Petitioners
V/s.
The State of Maharashtra and Ors. .. Respondents

Mr. S.B. Talekar a/w Ms. Madhavi Ayyapan I/b. Talekar &
Associates for the Petitioners.
Mrs. S.D. Shinde, APP for the Respondent - State.

**CORAM : REVATI MOHITE DERE &
M.S.KARNIK, JJ.**

DATE : 18th SEPTEMBER, 2020

P.C.:-

Taking exception to the order dated 06.08.2020 passed by the Respondent No.3-The Superintendent of Prisons, Kolhapur Central Prison, Kalamba, Kolhapur rejecting the applications made by the Petitioners for furlough leave, the present Petition is filed under Article 226 of the Constitution of India.

2. Brief facts of the case are as under :-

Earlier, the Petitioners filed applications seeking emergency Covid parole in terms of the decision of the High Powered Committee dated 25.03.2020 and 08.05.2020 and the

amended provisions of the Maharashtra Prisons (Furlough and Parole) Amendment Rules, 1959. The Petitioners had approached this Court by way of Criminal Writ Petition No.65 of 2020. This Court on 15.06.2020 directed the Respondents to decide the applications of the Petitioners seeking parole leave and to place before the Court such decisions on 19.06.2020. The applications came to be rejected. Pursuant to the amendment made, Criminal Writ Petition No.65 of 2020 was disposed of by setting aside the impugned order. This Court directed the Respondent No.3 to decide the applications by taking into consideration the observations made in the judgment. By the order impugned dated 06.08.2020 the applications for emergency Covid parole are rejected on the ground that the Petitioners are not eligible for release on emergency Covid parole in terms of the Government Notification dated 08.05.2020.

3. Heard the learned counsel for the respective parties. Learned counsel for the Petitioners pointed out that in respect of the incident relating to murder of one Ashok Patil which took place on 22.12.2013, the Petitioners were arrested on 23.12.2013/24.12.2013 and since then they are in jail custody. The Petitioners were convicted for the offences punishable under Sections 302, 307, 143, 147, 148, 323, 504, 506 r/w 149 and

Section 120B of the Indian Penal Code and sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- vide judgment and order dated 23.04.2018.

4. In the light of the recommendations of the High Powered Committee and in view of the rules, the Petitioners applied for emergency Covid parole. This Court while disposing of Criminal Writ Petition No.65 of 2020 considered Clause No.8(ii) of the High Powered Committee decision. After detailed analysis of the relevant provisions this Court in Paragraph Nos.13 and 15 observed thus :-

“13. Thus, it is clear that the said amended provision is made for short period and is brought into existence for main object of reducing the overcrowding in the jail. However, while releasing the convicts on emergency parole in view of the declaration of epidemic under the Epidemic Diseases Act, 1897, it is also required to ensure that the said benefit cannot be extended to the prisoners likely to commit offence in case of temporary release i.e. habitual offenders or likelihood of absconding of such accused and in such case the emergency parole can be rejected. For ensuring this, it is provided that the convicts whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by the Superintendent of Prison, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough). Therefore, the object while granting the emergency parole is to see that overcrowding in prison is reduced. However, at the same time, it is to ensure that the habitual offender or prisoners who are likely to abscond are deprived of emergency parole and therefore, the aforesaid amended rule was brought into effect. However, if such convicts are never released either on furlough or parole previously or not released on 2 occasions either on furlough or parole and therefore, there was no occasion for them to return back within time on 2 occasions and therefore, not entitled for said benefit of emergency parole, such literal interpretation may lead to absurdity and in that event, there is no occasion to invoke condition imposed under the said amended Parole Rule.

15. Thus, it is clear that the condition mentioned in the amended clause (C)(ii) of convict returning back on time on last 2 releases will be

applicable only if the convict is released on 2 occasions either on furlough leave or parole leave or their applications are rejected on the ground that they are habitual offenders or likely to abscond. In this behalf, it is significant to note that the difference between Clause (C)(i) and (ii). The clause (c)(i) of the amendment which is applicable to convicted prisoners whose maximum punishment is 7 years or less provides that "application shall be favourably considered"; whereas clause (C)(ii) which is applicable to the prisoners whose maximum sentence is above 7 years provides that "application shall be appropriately considered". To ensure that such convicts should not abscond, the said amended provision stipulates that once in every 30 days, the convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing. If the convicts are not released on 2 occasions either on furlough or parole and/or their previous applications are not rejected either on the ground that they are habitual offenders or likely to abscond then the Authorities can still consider their applications for release on emergency parole. However, we make it clear that if the convicts are released on 2 occasions or on 1 occasion, either on parole or furlough previously and they are late in surrendering then they are not entitled for the benefit of the emergency parole. It is further clarified that the Authorities can impose suitable stringent conditions on the convicts who were never released on parole or furlough or released on 1 occasion and returned back within time, if they are otherwise entitled for the benefit of emergency parole."

5. In the light of these observations, the applications of the Petitioner were to be considered by the Respondent No.3. The Petitioner No.1 was released on furlough once and he reported back to the prison on the schedule date. Even the Petitioner No.2 was released and he reported back to the prison on the due date. It appears that the Petitioner No.3 was released on furlough for 28 days vide an order dated 03.07.2020. The Respondent No.3 rejected the applications on the ground that the Petitioner No.1 and 2 are released on furlough only once and hence they were not eligible for the benefit of the Notification dated 08.05.2020 as they did not fulfill the condition of last 2 releases on furlough/parole coupled with surrendering on time. In our

considered opinion, merely because the Petitioners could not avail of the benefit of furlough or parole leave twice was no ground for the Respondent No.3 to reject their applications in view of the order passed by this Court in Criminal Writ Petition No.65 of 2020. The impugned order suffers from total non-application of mind. Despite Court specifically directing the Respondent No.3 to consider the applications made by the Petitioners in the light of the observations made in the order dated 16.07.2020, the applications are rejected without considering the observations made by this Court. This Court has clearly held that the condition mentioned in the amended clause C (ii) of convict returning back on time on last 2 releases will be applicable only if the convict is released on 2 occasions either on furlough leave or parole leave or their applications are rejected on the ground that they are habitual offenders or likely to abscond.

6. This Court made it clear that if the convicts are released on 2 occasions or on 1 occasion, either on parole or furlough previously and they are late in surrendering then they are not entitled for the benefit of the emergency parole. This Court had clarified that the Authorities can impose suitable stringent conditions on the convicts who were never released on parole or

furlough or released on 1 occasion and returned back within time, if they are otherwise entitled for the benefit of emergency parole.

7. Thus, in the light of the order passed by this Court, the applications for emergency Covid parole of the Petitioners could not have been rejected only on the ground that they do not fulfill the condition of surrendering on time in respect of the last 2 releases. The impugned order is unsustainable. Nothing is placed on record to indicate anything adverse about the conduct of the Petitioner during the period of incarceration. In terms of the order passed by this Court it is always open for the Respondent No.3 to impose suitable stringent conditions on the convicts who were never released on parole or furlough or released on 1 occasion and returned back within time, if they are otherwise entitled for the benefit of emergency parole. Finding that the Petitioners are entitled to the benefit of emergency Covid parole, we have no hesitation in setting aside the impugned order.

8. We may note here that the impugned order pertains to Petitioner Nos.1 and 2. We do not find the application made by the Petitioner No.3 for release on emergency Covid parole on record in this Petition. It is only mentioned as one of the ground

in the Petition that inaction on the part of the Respondent No.3 in not deciding the application of the Petitioner No.3 is in sheer violation of the directions of this Court. However, we notice that the Petitioner No.3 is similarly placed as the Petitioner Nos.1 and 2. Therefore, we are extending the relief in favour of Petitioner No.3 also in the interest of justice.

9. In this view of the matter, we pass the following order :-

ORDER

- i) The Writ Petition is allowed.
- ii) The impugned orders dated 06.08.2020 passed by the Respondent No.3 is quashed and set aside.
- iii) The Petitioners are entitled to the benefit of the Notification dated 08.05.2020 for release on emergency Covid parole and accordingly they be released on emergency Covid parole on such terms and conditions as Respondent No.3 deems fit and proper in terms of the Notification.

10. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(M.S.KARNIK, J.)

(REVATI MOHITE DERE, J.)