

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

**CRIMINAL WRIT PETITION -ASDB-LD-VC NO. 65
OF 2020**

Milind Ashok Patil and Ors. ... Petitioners

Vs

State of Maharashtra & Ors. ... Respondents

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Mr. S.B. Talekar a/w Ms. Madhavi Ayyappan i/b Talekar
& Associates for the Petitioners.

Mrs. M.H. Mhatre, APP for the Respondent No.1/State.

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**CORAM : S. S. SHINDE &
MADHAV J. JAMDAR, JJ.**
RESERVED ON : 10th JULY, 2020
PRONOUNCED ON : 16th JULY, 2020

:ORAL ORDER (PER : MADHAV J. JAMDAR,J):

1. By the present petition filed under Article 226 of the Constitution of India, the Petitioners have initially sought the relief that they be released on emergency parole in view of the pandemic of Corona virus (Covid-19), the decision of the High Power Committee dated

25.03.2020 and 08.05.2020 and the amended Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959. During the pendency of the above Writ Petition by order dated 15.06.2020, this Court directed the Jail Authorities to take decision on the applications of the Petitioners seeking parole leave and to place before the Court such decisions on 19.06.2020. Accordingly, the Jail Authorities took decisions and decided the applications seeking emergency parole leave by separate three orders dated 16.06.2020 and rejected applications of all the Petitioners. Therefore, the Writ Petition was amended pursuant to the order dated 19.06.2020 and additional prayers (E) to (G) were added. The same are reproduced hereinunder.

“E) To read down Section 19 (C) (ii) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 inserted by Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rule, 2020 by holding that only such prisoners who in the past are found to have breached the conditions of the parole,

shall be disqualified to avail emergency parole;

F) In alternative, to hold and declare Section 19 (C) (ii) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 inserted by Maharashtra Prisons (Mumbai Furlough and Parole) (Amendment) Rule, 2020 ultra-vires Article 14 and 21 of the Constitution of India;

G) To quash the impugned decisions dated 16.06.2020 of the Superintendent, Kolhapur Central Jail.”

2. It is the contention of the Petitioners that their applications seeking emergency parole were rejected by separate orders dated 16.06.2020 on the ground that, with respect to the Petitioner Nos. 1 and 2, they were released once on furlough leave and they returned back to the jail within time, however, the requirement of amended Rule 19(i)(c)(ii) (“hereinafter referred to as “the said amended Parole Rule”) is that the convict has to return within time on last 2 releases (whether on parole or furlough) and as both of them have returned within time, but released only once and

therefore, the said emergency parole application was rejected. As far as, Petitioner No.3 is concerned, he was never released and/or never availed furlough or parole leave and therefore, his application was rejected.

3. It is the contention of the Petitioners' Advocate Mr. S.B. Talekar that the Respondents are misreading the said amended Parole Rule and such interpretation shall not only lead to absurdity, but shall frustrate the very object of enacting the said amended Parole Rule.

4. On the other hand, Mrs. M. H. Mhatre, the learned APP supported the impugned orders dated 16.06.2020 by contending that the provision of said amended Rule is very clear and clearly stipulates that the emergency parole can be granted by the Superintendent of the Prison, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough) and therefore, submitted that the impugned orders are legal and valid.

5. Before considering the legality and validity of the impugned orders, it is necessary to set out the factual position. The Petitioners and other three co-accused were held guilty and convicted by the Judgment and Order dated 23.04.2018, passed by the learned Additional Sessions Judge, Kolhapur in Sessions Case No. 63 of 2014 for the offences punishable under Sections 302, 307, 143, 147, 148, 323, 504, 506 read with 149 and Section 120-B of the Indian Penal code and sentenced to suffer imprisonment for life and to pay fine of Rs.2,000/- each and in default to suffer further rigorous imprisonment for six months. They are also sentenced to suffer imprisonment for six years and to pay fine of Rs.1,000/- each and in default to suffer further rigorous imprisonment for three months for having committed offence punishable under Section 307 read with Section 149 of the Indian Penal Code. It appears that all the six convicts preferred an appeal before this Court against their conviction and sentence and said Criminal Appeal is

pending before this Court. In the meanwhile, one of the co-accused Appellant namely Akshay Kondekar died while in jail.

6. The incident in question in Sessions Case No. 63 of 2014 took place on 22.12.2013 and the Petitioner No.1 was arrested on 23.12.2013 whereas, the Petitioner Nos. 2 and 3 were arrested on 24.12.2013 and all of them are incarcerated in Central Prison, Kolhapur since then. The other co-accused of the Petitioners namely Mahesh Patil and Pramod Patil are also under going their imprisonment in Central Prison, Kolhapur. The Petitioners have produced a chart giving the details of furlough and parole leave granted to the Petitioners as well as co-accused. The said chart is reproduced hereinbelow for ready reference.

Sr. No.	Name of the prisoner	Furlough : Date and year	Parole : Date and Year
1	Milind Patil (Petitioner No.1/ Accused No.1)	12.02.2020 to 12.03.2020	Never
2	Mahesh Patil (Accused No.2)	27.11.2019 to 26.12.2019	1. 16.09.2019 to 01.11.2019 2. Emergency

			Parole (Covid-19) 09.05.2020 to 24.07.2020
3	Pramod Shinde (Accused No.6)	01.06.2020 to 30.06.2020	09.01.2020 to 24.02.2020
4	Nishant Mane (Petitioner No.2 /Accused No.5)	16.07.2019 to 17.08.2019	Never
5	Ganesh Kalgutaki (Petitioner No.3/Accused No.10)	Sanctioned on 05.02.2020, but not released on the ground that the surety furnished by him is not from Karveer Taluka	Never

7. It is the contention of the Petitioners that all aforesaid 5 convicts filed application for emergency parole on 09.05.2020 and convict namely Pramod Shinde and Mahesh Patil i.e. the real brother of Petitioner No.1 were released on emergency parole. However, the emergency parole applications of the Petitioners were rejected on the ground as set out earlier.

8. It is the contention of the learned APP appearing for the State that the Petitioner Nos. 1 and 2 have applied for emergency parole leave on 15.05.2020 and

the Petitioner No.3 has applied on 15.06.2020, however as far as reasons for rejection of said applications are concerned there is no dispute.

9. For appreciating the controversy involved in the present Writ Petition, it is necessary to see the circumstances in which the said amendment to parole rules was made.

10. Outbreak of world pandemic Covid-19 has affected entire world. The State of Maharashtra and Union of India announced the lock down on 22.03.2020 and 24.03.2020 respectively and till date the lock down is continued from time-to-time with modified restrictions. The High Power Committee was constituted by the Maharashtra Government vide GR No.JLM0320/CR58/Prison-2 dated 24.03.2020 pursuant to the order dated 23.03.2020 passed by the Apex Court in *Suo Moto Writ Petition (C) No. 1 of 2020*. The Apex Court *inter alia* directed the High Power Committee to determine which class of prisoners can

be released on parole or on interim bail for such period as may be thought appropriate and the category of prisoners who should be released. Accordingly, the said High Power Committee by their Minutes of Meeting dated 25.03.2020 *inter alia* in clause No. 8(ii) provided that the convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough), for a period of 45 days or till such time that the State Government withdraws the Notification under the Epidemics Deceases Act, 1897, whichever is earlier. It is further provided that the initial period of 45 days shall stand extended periodically in blocks of 30 days each. It is further provided that the convicted prisoners shall report to the concerned police station within the jurisdiction where they are residing, once every 30 days. The clauses (iv), (v) and (vii) are also relevant and are reproduced hereinbelow for ready

reference.

“(iv) The aforesaid directions shall not apply to undertrial prisoners or convicted prisoners booked for serious economic offences/bank scams and offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA, etc. (which provide for additional restrictions on grant of bail in addition to those under CrPC) AND also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra.

(v) This decision shall apply to only such prisoners, which in the opinion of the concerned jailor, keeping in view the overall infrastructure available at the concerned jail and the number of prisoners, it is not practically possible to maintain the required social-distance between the prisoners.

(vii) The prisoners who fall in the ‘class’ or the ‘category’ spelt out by this decision will be entitled to be released in accordance with law. In considering every case for such release, the “nature of the offence” and the “severity of the offence”

shall be considered. The possibility of the prisoners committing offence in case of temporary release (such as habitual offenders) or likelihood his/her absconding should also be considered an important tests to decline such requests for temporary release.”

11. Thereafter, by exercising powers under Clauses (5) and (28) of Section 59 of the Prisons Act, 1894 by notification dated 08.05.2020 issued by the State Government through Home Department, Sub-Rule (1) of Rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 was amended by inserting clause No. (C) (i) and (ii). The said amended clause No.(C) is reproduced hereinbelow for ready reference.

“(C) On declaration of epidemic under the Epidemic Diseases Act, 1897, by State Government :

(i) For convicted prisoners whose maximum punishment is 7 years or less, on their application shall be favorably considered

for release on emergency parole by the Superintendent of Prison for a period of 45 days or till such time that the State Government withdraws the Notification under the Epidemics Diseases Act, 1897 whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days.

(ii) For convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole by Superintendent, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough) for the period of 45 days or till such time that the State Government withdraws the Notification under the Epidemics Diseases Act, 1897 whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days

each, till such time that the said Notification is in force (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once in every 30 days.

Provided that the aforesaid directions shall not apply to convicted prisoners convicted for serious economic offences or bank scams or offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA, etc. (which provide for additional restrictions on grant of bail in addition to those under Code of Criminal Procedure, 1973 (2 of 1974) and also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra.”

(Emphasis Supplied)

12. It is very clear that the said amended clause No. (C) is a provision made for short period and brought into existence for taking measures for protection of health and welfare of the prisoners to restrict the transmission of Covid-19, which *inter alia*

includes that prisons should ensure maximum possible distancing among the prisoners and for this purpose, it has become necessary to prevent overcrowding of prisons in view of pandemic of Corona Virus (Covid-19).

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.

14. The Apex Court in the Judgment of ***Union of India vs. Hansoli Devi, reported in (2002) 7 SCC 273*** has *inter alia* held in paragraph 9 as follows:

“9.

It is no doubt true that if on going through the plain meaning of the language of statutes, it leads to anomalies, injustices and absurdities, then the court may look into the purpose for which the statute has been brought and would try to give a meaning, which would adhere to the purpose of the statute.”

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.

16. The only reason given in the impugned separate orders dated 16.06.2020 passed with respect of the Petitioner No.1 and Petitioner No.2 respectively is that both of them were released only once on furlough leave and they have returned back within time, however they are not entitled to be released on emergency parole in view of the said amended Parole Rule. As far as the Petitioner No.3 is concerned, by order dated 16.06.2020, his emergency parole application was rejected on the ground that he was not earlier released on furlough leave, nor on parole leave and therefore, he is not entitled to be released on emergency parole leave. In fact, the orders regarding Petitioner Nos. 1 and 2 specifically records that they were released once on furlough leave and both of them have returned back within time. Thus, it is clear that when released on furlough leave, they have not absconded. It is also significant to note that their co-convicts namely Mahesh Patil and Pramod Shinde were

earlier released on furlough and parole leave and they have returned back within time and both of them were released on emergency parole. In the light of discussion hereinabove and in the peculiar facts and circumstances of this case as the Petitioners are similarly situated as other co-accused in Sessions Case No. 63 of 2014, who were tried together for offences *inter alia* punishable under Sections 302 read with Section 149 of I.P.C. and the said two co-accused are already released on emergency parole we are granting the relief as set out hereinbelow.

17. In view of above discussion, the impugned orders dated 16.06.2020 annexed at Exhibits - G-2, G-3 and G-4 to the petition passed by the Superintendent, Kolhapur Central Prison, Kalamba are quashed and set aside and accordingly, respective applications of the Petitioners seeking emergency parole leave are restored to file and remanded back to the Superintendent, Kolhapur Central Prison, Kalamba with direction to decide the same afresh within a

period of two weeks from today by taking into consideration, the observations in this judgment.

18. With these directions, the Writ Petition is disposed of with no order as to costs.

(MADHAV J. JAMDAR, J.) (S. S. SHINDE, J.)