

(2021) 06 BOM CK 0025

In the Bombay High Court

Case No : Criminal Writ Petition No.1802 Of 2021

Mustafa Yunus Khan ? @APPELLANT @Ha State Of Maharashtra And Others

Date of Decision : 08-06-2021

Acts Referred:

Maharashtra (Prisons (Mumbai Furlough And Parole) Rules, 1959 — Rule 19
Indian Penal Code, 1860 — Section 34, 342, 394, 452

Citation : (2021) 06 BOM CK 0025

Hon'ble Judges : S.S. Shinde, J;Manish Pitale, J

Bench : Division Bench

Advocate : Bharat K. Manghani, S.R. Shinde

Final Decision : Dismissed

Judgement

S.S. Shinde, J

1. This petition takes an exception to the order dated 26.3.2021 passed by the Superintendent of Prison, Nasik Road Central Prison, Nashik, thereby rejecting the petitioner's application for emergency Covid Parole.

2. It is the case of the petitioner that he came to be arrested on WP.1802.2021-J.doc 3.9.2012 in relation to C.R. No.172 of 2012 registered with Kala

Chowkie Police Station, Mumbai. After investigation, chargesheet came to be filed and MCOC Special Case No.1 of 2013 under sections 342, 34,

452, 394 r/w section 34 of the Indian Penal Code was registered against the petitioner. It appears that there are two other cases pending against the

petitioner, registered at Navghar police Station, Thane i.e., C.R. No.170 of 2010, which on filing chargesheet registered as Sessions Case No.47 of

2015 and third case registered against the petitioner is at Gandhidham police station (State of Gujarat) registered as C.R. No.120 of 2010. In the

MCOC Special Case No.1 of 2013, by judgment and order dated 7.4.2015, the

petitioner has been convicted for the aforesaid offences and was sentenced to suffer R.I. for life.

3. It is the case of the petitioner that, he had never availed furlough/parole leave and first time applied for emergency Covid Parole leave and vide order dated 19.9.2020, the said application filed by the petitioner was rejected on the ground that the petitioner was never released on furlough/parole earlier. Being aggrieved by the said decision of the concerned respondent - authority, the petitioner preferred Criminal Writ Petition No.1159 of 2021 before WP.1802.2021-J.doc this High Court. This Court by its order dated 11.3.2021 partly allowed the petition and granted liberty to the petitioner to file a fresh application before the concerned respondent-authority. Thereafter, vide the impugned order dated 26.3.2021, the respondent-jail authority once again rejected the petitioner's application for emergency Covid Parole. Hence, this petition.

4. The learned Counsel appearing for the petitioner submitted that there is a 2nd wave of Covid-19 pandemic which is more severe than the last year and more than 2 lakhs positive cases are being reported, daily. He further submitted that in the State of Maharashtra, the condition is worst as over and above 50000 positive cases are being reported everyday. It is also submitted that as per latest report, 198 prison inmates have been tested positive throughout 47 prisons in Maharashtra and in Nashik Central Road Prison itself, 15 positive prison inmates and moreover, 86 staff members working therein have been tested positive. It is further submitted that though the jail authorities have taken care and precautions, they are not able to curb the spread of the virus within the prisons, and therefore, the reasons given by the Respondent - authority in its order dated 26/03/2021 cannot

WP.1802.2021-J.doc be said to be justified. The learned counsel for the Petitioner submitted that parole leave is recognized as a statutory right of the prison inmates as per Rule 19 of the Maharashtra (Prisons (Mumbai Furlough and Parole) Rules, 1959 and the convicts are entitled for parole leave if the circumstances as referred to in Rule 19 exist. In support of his submission, the learned counsel appearing for the Petitioner sought to place reliance on the judgment dated 16/07/2020 of this Court in Milind Ashok Patil and others v/s The State of Maharashtra and others (Criminal Writ Petition ASDB LD VC No.65 of 2020). He further submitted that the Respondent Jail

Authority has failed to consider the application of the Petitioner on the existing circumstances referred to in Rule 19.

5. It is further submitted that merely because the petitioner is convicted for the offence punishable under section 394 of Indian Penal Code, cannot be

a ground to reject the application for emergency Covid parole. It is submitted that there was an amendment to Rule 19 of Maharashtra Prisons

(Bombay Furlough and Parole) Rules, 1959. The learned Counsel invited our attention to Rule 19 and submitted that since the petitioner filed

WP.1802.2021-J.doc the application to release him on emergency Covid Parole, merely because the petitioner is convicted for the offence punishable

under section 394 of the Indian Penal Code, cannot be a ground for rejecting the prayer for emergency Covid parole. It is submitted that all the

convicted prisoners except foreigners and death sentence prisoners are eligible for emergency parole. In support of the aforesaid submission, the

learned Counsel appearing for the petitioner placed reliance upon the unreported judgment of the Full Bench of the Bombay High Court at Nagpur

Bench dated 11.10.2018 in the case of Vijay Pralhad Varankar vs. The Divisional Commissioner, Amravati & another¹.

6. It is further contention of the learned Counsel for the petitioner that there is overcrowding in the Central Prison at Nasik where the petitioner is

lodged. There is every possibility of him contracting the Covid virus in the jail and therefore keeping in view the notification issued by the High Power

Committee, Home Department dated 8.5.2020, pursuant to the recommendations of the High Power Committee, the petitioner is entitled to be

released on emergency Covid 19 parole leave.

¹ Criminal Writ Petition No.234 of 2018

7. On the other hand, the learned APP appearing for the Respondent-State submitted that the petitioner is convicted for the offence punishable under

section 394 of the Indian Penal Code and he is sentenced to undergo life imprisonment. The petitioner was also booked for the offences punishable

under MCOC Act and, therefore, in view of the aforesaid notification, the convict, who is undergoing the sentence for the serious economic offences or

bank scams or offences under special Acts like MCOC Act, Prevention of Money Laundering Act, MPID Act, NDPS, UAPA, etc., is not entitled to

be released on emergency Covid 19 parole.

8. We have given due consideration to the rival submissions. With the able assistance of the learned Counsel appearing for the petitioner as also the learned APP appearing for the Respondent - State, we have carefully perused the pleadings and the grounds taken in the petition, the annexures thereto, the impugned order and the notification dated 8.5.2020 issued by the Home Department, Government of Maharashtra. At the outset, it would be apt to reproduce hereinbelow the aforesaid notification which reads as under:

WP.1802.2021-J.doc ""NOTIFICATION PRISONS ACT, 1894

1. The rules may be called the Maharashtra Prisons (Mumbai Furlough and Parole) Amendment) rules, 2020.

2. In sub-rule - (1) of rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole Rules, 1959, after clause (B) the following clause shall be

added, namely:-

(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 favourably 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 issued

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 of Prison, 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 issued 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 WP.1802.2021-J.doc the first 45 days). The convicted prisoners shall report to the concerned police station within

whose jurisdiction they are residing, once in ever 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 the 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 applied).

9. The aforesaid underlined portion of the said notification dated 8.5.2020 would make it abundantly clear that persons convicted for serious economic

offences under special Acts like MCOC Act, are not eligible to apply for emergency Covid - 19 parole.

10. It is not out of place to mention that the petitioner is also convicted for serious offence under section 394 of Indian Penal Code.

11. In the impugned order passed by the respondent-authority, it is mentioned that the inmates are less in number as compared to the capacity of the

prison; utmost care is being taken in the prison WP.1802.2021-J.doc by the officers and employees working in the prison by examining the convicts by

thermal scanning and RT-PCR tests. It is also mentioned that the Petitioner herein was not released on furlough or parole, till date. Another reason

given is that if the convict is from other State, in that case, emergency (Covid-19) parole cannot be granted to that convict. Further, an inmate who is

convicted for the economical offences and under Special Act is not eligible for emergency (Covid-19) parole. It is also mentioned that for the

petitioner was not released on parole/furlough even once, till date and hence, he cannot be released. Further, it is lastly mentioned that if the petitioner

is released on emergency Covid 19 Parole, the chances of the petitioner absconding, cannot be ruled out.

12. In that view of the matter and since the petitioner is a convict of serious offences, we are unable to persuade ourselves to accede to the prayers of

the petitioner to release him on emergency Covid 19 parole.

13. In the circumstances, the petition is rejected. However, in case, in future, any new guidelines are issued or existing recommendations are revised

by the High Power Committee and in case petitioner would be eligible, the

respondent - authorities WP.1802.2021-J.doc would be at liberty to consider afresh the prayer of the petitioner to release him on parole/furlough/covid parole as the case may be, and rejection of this petition shall not be construed as an impediment.