

(2020) 10 BOM CK 0057

In the Bombay High Court

Case No : Criminal Writ Petition No. 1340, 1342, 1343, 1344, 1345, 1347, 1348, 1349, 1350, 1351, 1353 Of 2020

Samadhan And Ors

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 27-10-2020

Acts Referred:

Maharashtra Prisons (Mumbai Furlough And Parole) Rules, 1959 — Section 19(1)(C)

Citation : (2020) 10 BOM CK 0057

Hon'ble Judges : Ravindra V. Ghuge, J;B. U. Debadwar, J

Bench : Division Bench

Advocate : Sharda P. Chate, S.D. Wayal, Sudheer R Zambare, S.G. Sangle, Sharda P. Chate, K.S. Patil. R.V. Dasalkar, R.B. Bagul, M. Parghane

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J

1. All these Criminal Writ Petitions are directed against the orders passed by the respective Jail Superintendents of the Harsool Jail at Aurangabad and Nashik Road Central Jail at Nashik.

2. We have taken up all these petitions together for adjudication, solely for the reason that, in all these petitions, the impugned orders rejecting the applications of these petitioners for emergency parole under Rule 19 (1)(C) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 (hereinafter referred to as "1959 Rules"), are based on a solitary ground that none of these petitioners have availed of Furlough or Parole leave on two occasions. The State of Maharashtra has introduced a Circular dated 08-05-2020 in view of the recommendations of the High Power Committee and this led to the introduction of Rule 19(1)(C) in the 1959 Rules.

3. We have heard the learned Advocates for the petitioners and the learned APP on behalf of the respondent authorities. The Jail Authorities from the Harsool Jail,

Aurangabad are present in the Court.

4. The common factor involved in these petitions is that, the impugned orders have been passed rejecting the applications of the petitioners solely for the reason that the Circular of the State Government dated 08-05-2020 mentions that, the applicant must have availed of furlough or parole leave at least on two occasions prior to moving the application under Rules 19(1)(C).

5. We are conscious of the fact that, Rule 19(1)(C) introduced by virtue of the State circular dated 08-05-2020, was in an unprecedented situation of the outbreak of COVID-19 pandemic. The Wuhan virus led to such a situation and on the recommendations of the High Power Committee coupled with the report of the Additional Director General of Police (Prisons) Shri Sunil B. Ramanand, I.P.S. dated 10-05-2020, the emergency parole rule was made applicable even to the undertrials, as a measure for containment of the COVID-19 pandemic and prevent an outbreak inside the prisons. We are also conscious of the fact that, the purpose of Rule 19(1)(C) is to decongest the prisons and not to empty the prisons and, therefore, emergency parole, would not be granted as a matter of rule if it is found that the maximum permissible occupancy and the actual occupancy in a particular prison would indicate to us that the strength of the prisoners can be dealt with by the prison authorities for preventing the outbreak of COVID -19.

6. We find it appropriate to firstly, deal with the primary issue involved in these petitions. The Jail Authorities have rejected the applications of the petitioners / kith and kin of the convicts / undertrials, only because the concerned candidate had not availed of furlough or parole leave on two occasions prior to moving the application under Rule 19 (1)(C).

7. This Court dealt with this legal aspect in Kavita Dilip Baviskar Vs. The State of Maharashtra vide judgment dated 30-06-2020. This Court (Coram: Ravindra V. Ghuge & M.G. Sewlikar, JJ.) has passed an order on 24-07-2020 in Criminal Writ Petition No.666 of 2020 preferred by Ganesh s/o. Narayan Kindre Vs. The State of Maharashtra & Another concluding that, the failure on the part of any candidate in availing of furlough / parole leave on two occasions, would not be an embargo or a legal impediment for considering his application under Rule 19 (1) (C). Similar orders were passed by the same Bench on 24-07-2020 (Criminal Writ Petition Nos.666 of 2020 & 694 of 2020), 07-09-2020 (Criminal Writ Petition Nos.810 of 2020, 923 of 2020, 927 of 2020, 934 of 2020, 945 of 2020 & 955 of 2020), 18-08-2020 (Criminal Writ Petition No.875 of 2020) & 21-10-2020 (Criminal Writ Petition No.1246 of 2020) in identical petitions.

8. We find from these cases before us and the earlier orders of this Court passed in several matters, that the Jail Superintendents are yet to come to terms with the legal position crystallized by this Court that failure on the part of a candidate in availing of furlough / parole leave on two occasions prior to moving an application under Rule 19 (1)(C), would not be a legal impediment warranting

the rejection of such application. We, therefore, find it necessary to direct the Registry of this Court to place this order before the Additional Director General of Police (Prisons) Shri Sunil Ramanand in order to request him to bring this legal position to the notice of all the Jail Superintendents in the State of Maharashtra. We are making this request since we find that this Court is flooded with such matters and there are at least 10 such petitions, on an average, on each day before this Court only because the Jail superintendents are passing cryptic orders rejecting the emergency parole applications only on the solitary ground that the candidate has not availed of such leave on two occasions prior to the filing of such applications. The merits involved in the applications are not being scrutinized by the Jail Superintendents.

9. As held by us that Rule 19(1)(C) and the State Circular dated 08-05-2020 is not aimed at emptying the prisons, we had called upon the learned Prosecutors, appearing on behalf of the statutory authorities in these cases, to place before us the present status as regards the strength of the jail inmates. A chart has been presented before us signed by Shri Jayant Naik, Superintendent, Aurangabad Central Prison, dated 27-10-2020, which is taken on record and marked as 'X' for identification.

10. We find from the said chart that, the maximum occupancy for the Aurangabad Central Prison is 1109. Several orders have been passed by the Jail Superintendent as well as this Court granting emergency parole leave. Despite such orders, the total occupancy with the Aurangabad Central Prison as on 26-10-2020 is 1267, which is in excess by 158 convicts. The Aurangabad open prison has an occupancy of 50 prisoners and presently there are 16 inmates. This is on account of 60 out of 76 inmates having been granted emergency parole. The Jail Authorities have also set up a temporary prison in the State Bank Officers Association School with a strength of 120 inmates. Today, there are 103 inmates in the said temporary prison.

11. We are informed that the situation in the Aurangabad Central Prison is a bit worrying. In order to contain the pandemic and ensure that there is no outbreak in the prison, the inmate strength will have to be brought down. While saying so, we make it clear that, this would not mean that any candidate, who is otherwise not eligible under Rule 19 (1)(C) and the State Circular dated 08-05-2020 or any other circular introduced thereafter, should also be indiscreetly granted emergency parole. We are conscious of the fact that, convicts under the special acts, are not entitled for emergency parole. So also, a candidate who has not been reporting in time or is an absconder on earlier occasions of availing furlough / parole leave or a candidate who has a terrible criminal record, may not deserve the benefit of Rule 19(1)(C) considering the threat to the society at large.

12. Insofar as these cases are concerned, we have no material before us, which would call for the rejection of their applications for emergency parole.

13. In view of the above, all these petitions are allowed. The impugned orders

are quashed and set aside since we are informed that, there is no other legal impediment in granting their applications, save and except the reason assigned in the impugned order, which we do not approve of. These petitioners shall, therefore, be released from jail on emergency parole leave with effect from 05-11-2020 for a period of 45 days, subject to the fulfillment of the procedural conditions as prescribed by law.

14. These petitioners shall be legally obliged to report to the prisons on or before the 45th day of such leave, subject to the liberty as may be provided by law for seeking extension of the parole leave. However, pendency of an application for extension of parole leave shall not be a ground for these petitioners to refrain from reporting to the Jail Authorities on or before the 45th day. In the event, they desire extension of parole leave, such application should be filed at least 15 days prior to the exhausting of the 45th days leave and the Jail Superintendent would be obliged to decide the said application on its merits within the said period of 15 days so as to ensure that the application is decided before the expiry of the 45th day.

15. Since we find from the electronic and the print media that the second wave of the pandemic has already set in in Europe and other countries and may be approaching our shores, these petitioners shall confine themselves to their residences and shall refrain from roaming around in the society, except in emergency situation, so as to safeguard their health and the health of the local residents.