

(2020) 09 BOM CK 0019

In the Bombay High Court

Case No : Criminal Writ Petition No. 972 Of 2020

Vijay Vilasrao Sutare

APPELLANT

Vs

State Of Maharashtra

RESPONDENT

Date of Decision : 14-09-2020

Acts Referred:

Protection Of Children From Sexual Offences Act, 2012 — Section 6, 12
Indian Penal Code, 1860 — Section 363, 366
Prisons Act, 1894 — Section 59
Maharashtra Prisons (Mumbai Furlough And Parole) Rules, 1959 — Rule 4, 4(21), 19, 19(1), 19(2)

Citation : (2020) 09 BOM CK 0019

Hon'ble Judges : T.V. Nalawade, J;M.G. Sewlikar , J

Bench : Division Bench

Advocate : Ravindra Nirmal, Y.G. Gujarathi

Final Decision : Dismissed

Judgement

T. V. Nalawade, J

1. The petition is filed for challenging the order made by respondent dated 14.8.2020 by which the application made by the petitioner for getting emergency parole under Government Notification dated 8.5.2020 is rejected. Both the sides are heard.

2. The respondent has given reason of rejection that the petitioner is convicted for the offences punishable under the provisions of the Protection of Children From Sexual Offences (POCSO) Act (sections 6 and 12) and he is also convicted for the offences punishable under sections 363 and 366 of Indian Penal Code (I.P.C.). The sentence of imprisonment of 10 years is given for these offences. Reasoning is given that in view of the Rules in respect of the parole and furlough and in view of the exceptions made out in notification dated 8.5.2020, he is not entitled to get the emergency parole.

3. Though in the order, it is mentioned that there is other reason that he was not

released on two occasions in the past on either furlough or parole as provided in the notification and due to that reason also, he is not entitled to get emergency parole, that reason need not be considered in detail in the present matter as that point is decided in the past in other matters by this Court. But, this condition needs to be considered from different angle.

4. The particulars given by the petitioner show that he was arrested in 2018 and he came to be convicted on 9.2.2018. This circumstance shows that he has not completed three years of imprisonment. Thus, under Prisons (Bombay Furlough and Parole) Rules, 1959 he has not become eligible to get furlough. Emergency parole of the nature mentioned in the notification dated 8.5.2020 is also different kind of parole and so, the condition that he ought to have come out of Jail on two occasions in the past needs to be considered to ascertain the eligibility period. A prisoner can come out on furlough only after completing three years of actual imprisonment. From that angle, it can be said that he is not eligible to get emergency parole. The rules of eligibility to get furlough leave are applicable for getting parole under Rule 19 (2).

5. The notification dated 8.5.2020 needs to be quoted here as the learned counsel for the petitioner is placing reliance on order made by Nagpur Bench of this Court in Criminal Writ Petition No. 559/2019 dated 14.07.2020 (Vishal Dagduji Gavai Vs. State of Maharashtra and Anr.). In the order, the Court has observed that offences punishable under POCSO Act are not mentioned in the notification dated 8.5.2020 and so, these offences are not made exceptions to the scheme prepared by the Government in the notification. The notification is as under :-

"HOME DEPARTMENT

Mantralaya, Madam Cama Marg, Hutatma Rajguru Chowk, Mumbai, 400032,
dated the 8th May, 2020

NOTIFICATION

PRISONS ACT, 1984

No. APP-0920/CR. 179/2020/PRS -3 - In exercise of the powers Conferred by clauses (5) and (28) of section 59 of the Prisons Act (IX of 1894), in its application to the State of Maharashtra, and of all other powers enabling it in that behalf, the Government of Maharashtra hereby makes the following rules further to amend the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, namely: -

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:

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"(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 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 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 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.

By order and in the name of the Governor of Maharashtra,

N.S. KARAD,

Deputy Secretary to Government."

The aforesaid notification shows that some exceptions are mentioned in the notification, but those exceptions are not only the exceptions. The wording used shows that the persons who are convicted under Special Enactments like MCOC, MPID, NDPS etc. are not entitled to get benefit of this notification. The words are used 'like' and 'etc.' and these words show that the list of Special Acts given in the notification is not exhaustive and they are only instances given in the notification. What can be the other special offences or other offences can be seen from the Prison Rules 1959. The amendment made in the year 2018 to Rule 4 shows that clause (21) came to be added in Rule 4 and it is as under :-

"(21) Those involved in sexual offences against minor and human trafficking."

Thus, the sexual offences against minor are also mentioned in the Rule to show that these persons are not eligible for getting furlough. This Rule needs to be read with Rule 19. In Rule 19, there are two parts viz. emergency parole and regular parole. The notification dated 8.5.2020 shows that the parole is treated as emergency parole. If we compare the notification with part I in respect of emergency parole of Rule 19, it can be said that there is something more in notification dated 8.5.2020. Rule 19 needs to be read with Rule 4. In Rule 19 (2), it is mentioned that all prisoners eligible for furlough shall be eligible for regular parole. Regular parole can be of 45 days and it can be extended up to 60 days. Thus, it can be said that notification has used part II of Rule 19 and not part I of Rule 19. It is already observed that in Rule 4 (21), the prisoners convicted for sexual offences against minor cannot get furlough and so, they are not entitled to get emergency parole under notification dated 8.5.2020.

6. The order made by Nagpur Bench of this Court does not show that amendment made in the Rules of 1959 in 2018 was brought to the notice of the Court. Further, the interpretation of the notification as mentioned above is also not made. The Court has now considered as to whether the convicts under POCSO Act are excluded in notification dated 8.5.2020. It is already observed that the list given is not that exhaustive and aforesaid provisions also need to be considered and interpreted while ascertaining the eligibility for giving emergency parole.

7. Due to aforesaid reasons, this Court holds that the observations made by Nagpur Bench of this Court are of no use to the petitioner. There is no reason to interfere in the order made by the respondent and for both the grounds given above, this Court holds that emergency parole could not have granted to the petitioner. In the result, the petition stands dismissed.