

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 354 OF 2019

Dilip S/o. Sopan PawarPetitioner
Vs.
The State of Maharashtra & Anr.Respondents.

WITH

CRIMINAL WRIT PETITION NO. 604 OF 2019

Muzammil Ataur Rehman ShaikhPetitioner
Vs.
The State of Maharashtra & Anr.Respondents.

None for the Petitioner in Writ Petition No. 354 of 2019.

Ms. P.P. Shinde, APP for the Respondent-State, in Writ Petition No. 354 of 2019.

Mr. N.N. Gawankar I/by Ms. Farhana Shah for the Petitioner in Writ Petition No. 604 of 2019.

Mr. Arfan Sait, APP for the Respondent-State in Writ Petition No. 604 of 2019.

CORAM : A. S. OKA, AND

A. S. GADKARI, JJ.

DATE : 18th FEBRUARY, 2019.

ORAL JUDGMENT (PER A.S. OKA, J.):

Both the Petitions raised similar issues and therefore the same are forthwith taken up for final disposal.

2 The respective learned APP waive service for the Respondent-State.

3 The Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, “*The said Rules of 1959*”) have been enacted by exercising Rule making power under Sub-Section (5) of Section 59 of the Prisons Act, 1984 (for short, “*the Prisons Act*”). The said Rules of 1959 underwent various amendments including, amendments made by Notifications dated 26th August, 2016 and 16th April, 2018. By both the amendments, concept of “*Emergency Parole*” was introduced by amending Rule 19 of the said Rules of 1959. Sub-Rule (1) of Rule 19 of the said Rules of 1959 as amended on 16th April, 2018 reads thus-

“1. *Emergency Parole:-*

- (A) *All convicted prisoners except foreigner and death sentenced prisoners may be eligible for emergency parole for 14 days for death of parental grandfather or grandmother/ father/ mother/spouse/ son/daughter/ brother/sister and marriage of son/daughter/ brother/sister, provided that no extension can be granted to emergency parole,*
- (B) *Emergency Parole may be granted by the Superintendent of Prison for the reason of death of parental grandfather or grandmother/ father/ mother/spouse/son/ daughter/brother/ sister and by concerned Dy. I.G. for the reason of marriage of son/daughter/brother/ sister and the Authority approving emergency Parole shall decide whether to grant parole under police escort or with a condition to report daily to the local police station depending upon the crime*

committed by the prisoner and his conduct during his stay. The expenses of police escort will be borne by the prisoner himself prior to his release on parole.”

4 In Writ Petition No. 354 of 2019, the challenge by the Petitioner is to an Order dated 9th January, 2019 passed by the Superintendent of Nashik-Road Central Jail by which emergency parole was granted to the prisoner only for a period of two days. The emergency parole was sought on the ground that the prisoner's father has died on 4th January, 2019. Power under clause (B) of Sub-Rule (1) of Section 19 is exercised by directing that the Petitioner shall be taken in police escort.

5 In Writ Petition No. 604 of 2019, the challenge is to an Order granting emergency parole to the Petitioner only for one day and that also in police escort. Emergency parole was sought on the ground that the Petitioner's father died on 5th January, 2019.

6 In Writ Petition No. 604 of 2019, it is pointed out that for calculating the charges of police escort, the Government Circular dated 16th November, 2018 read with a chart annexed thereto has been applied. The chart annexed to the said Government circular lays down the quantum of amount payable for giving police protection to private

persons. It appears that based on the said Government Circular and the annexure thereto, the Petitioner was directed to deposit a sum of Rs.70,000/- (Rupees Seventy Thousand only) by way of charges of escort. Thereafter, it is found that a sum of Rs.15,895/- (Rupees Fifteen Thousand Eight Hundred Ninety Five) was recovered in excess.

7 Two issues arise in these Petitions. We have already quoted clause (A) of Sub-Rule (1) of Rule 19 of the said Rules of 1959. If this provision is considered in the context of Sub-Rule (2) of Rule 19 which deals with the regular parole, even if a prisoner attracts a disqualification for grant of furlough as per Rule 4 of the said Rules of 1959, on that ground, emergency parole cannot be denied. Sub-Rule (2) of Rule 19 specifically states that all the prisoners who are eligible to grant of furlough, shall be eligible for the regular parole. Thus, if a prisoner is dis-entitled to furlough by virtue of the disqualifications laid down in Rule 4, he is disentitled to regular parole under Sub-Rule (2) of Rule 19. Such a condition is not incorporated in Sub-Rule (1) of Rule 19 which deals with the emergency parole.

8 As per clause (A) of Sub-Rule (1) of Rule 19, emergency parole for 14 days can be granted on account of death of parental grandfather or grandmother, father, mother, spouse, son, daughter,

brother and sister as well as on account of marriage of son, daughter, brother and sister. Clause (B) of Sub-Rule (1) of Rule 19 gives a discretion to the Authorities to grant emergency parole under a police escort, the expenses of which are required to be borne by the prisoner. Only the foreigners and death sentenced prisoners are excluded from the applicability of clause (A) of Sub-Rule (1) of Rule 19.

9 Thus, there is a power vesting in the Competent Authority empowered to grant of emergency parole to release a prisoner on parole in the contingencies covered by clause (A) of Sub-Rule (1) of Rule 19 and therefore, the power to grant parole for 14 days can be exercised by the Competent Authority in case any of the contingencies as provided in clause (A) of Sub-Rule (1) of Rule 19 is shown to be in existence.

10 In both the Petitions, the Competent Authority has not chosen to grant parole for 14 days. In Writ Petition No. 354 of 2019, the prisoner was granted death parole only for a period of two days by the Competent Authority and in Writ Petition No. 604 of 2019, the emergency parole on account of death of the father of the Petitioner was granted only for one day and that also in the police escort.

11 We had called upon the learned APP to produce the files of

notings on the basis of which the period of parole was fixed. In view of clause (A) of Sub-Rule (1) of Rule 19, every prisoner, if his case is covered by the said clause, has a right to be considered for grant of emergency parole. When a power vests in the Competent Authority to grant emergency parole for 14 days, at least reasons in brief must be indicated by the Authority and recorded in the Order as to why the period of 14 days is being restricted to a period which is less than 14 days. Moreover, some reasons are required to be recorded as to why instead of granting parole without police escort, the parole is granted with police escort. Thirdly, for making emergency parole effective, the Authorities cannot insist that only during the day time, the convict will spend time with the members of the bereaved family and will have to spend the night in the nearby Jail. Such a course is not permissible, as the object of providing for grant of emergency parole is that the convicted prisoner can remain company of his family members in case of death of close relatives and can attend the obsequies. Therefore, even if emergency parole is allowed to be granted after recording brief reasons under a police escort, the Authority cannot insist that the prisoner will remain with the family only during the day and will go to a nearby Jail at the end of the day and return back in the next morning to his home.

12 Perusal of the file notings produced by the learned APP show that in both the cases, even the reasons in brief have not been recorded for confining the parole to one or two days.

13 Another issue is of fixing police escort charges. As observed earlier, we find that there are no guidelines issued by the State Government for determining the charges of police escort in such cases. The guidelines which we have referred earlier are not applicable to the prisoners to whom emergency parole is granted in police escort in exercise of the power under clause (A) of Sub-Rule (1) of Rule 19.

14 Today, the learned APP has tendered across the bar a letter dated 16th February, 2019 addressed to him in which it is stated that there is no policy laid down by the State Government for fixing the charges of police escort which will be required to be paid by the prisoners who have been granted emergency parole in police escort. Thus, in absence of such Rules or guidelines, arbitrary amount is being recovered from the prisoners by way of deposit towards the charges of escort. The State will have to take appropriate decision laying down the policy/guidelines for fixing of charges of the police escort in cases in which emergency parole is granted in police escort.

15 Till the time the policy is not framed, it is obvious that the amount recovered by the State from the prisoners who have been granted parole in police escort will be on account payment and after the State Government frames policy/guidelines for fixing the charges of police escort necessary refund, if any, should be made to the prisoners.

16 As stated earlier, the purpose of grant of emergency parole appears to be to enable the prisoner to remain with the company of the family members in case of death of immediate family member. The other reason is that if as per the custom of the community, the prisoner is required to perform the last rites, he can do the needful and therefore, the outer limit of 14 days has been fixed.

17 Even for marriage of son, daughter, brother and sister, the object of granting emergency parole is that the prisoner must stay with the family. As noted earlier, there is a discretion available to the Competent Authority to either grant him parole without police escort but subject to condition of reporting to the police station or to grant emergency parole in police escort. The reasons in brief must be recorded by the Competent Authority as to why emergency parole is granted in police escort or why parole is granted for a period less than

14 days.

18 If a particular prisoner is ordered to be released on parole in police escort, it is obvious that possibility of the prisoner absconding is virtually ruled out. Therefore, there is no basis for contending that if a prisoner is granted emergency parole in police escort, in the night, he must stay in the nearest Jail.

19 When the Competent Authority considers the prayer for grant of emergency parole and comes to a conclusion that the prisoner is entitled to emergency parole, the Competent Authority must record brief reasons as to why instead of granting 14 days of emergency parole, the same is granted for lesser number of days. Fixing of the period of parole to minimum cannot be done arbitrarily and can be done only for the valid reasons.

20 In both the cases in hand no reasons have been recorded for confining the period of emergency parole to two days and one day respectively.

21 In Writ Petition No. 354 of 2019, a grievance is made by the Petitioner who is the brother of prisoner that as the prisoner is detained in Nashik-Road Jail, to enable the Prisoner to visit

his home, he will have to travel for 550 kms. and therefore, it is impossible for him to undertake the travelling and report back to the prison after taking benefit of emergency parole only for a period of two days. One day each will be required for traveling from Nashik-Road Central prison to the native place and from the native place to Nashik-Road Central Prison.

22 The Petitioner in Writ Petition No. 354 of 2019 has set out that the distance between Karadkhel where the Petitioner is supposed to go and enjoy the parole leave is at the distance of 550 km. from the Nashik-Road Central Jail where the prisoner is detained. This fact is not at all taken into consideration by the Competent Authority. If emergency parole is arbitrarily granted only for 1 or 2 days, in the cases covered by clause (A) of Sub-Rule (1) of Rule 19, the very object of making a provision for emergency parole will be completely defeated. Therefore, in both the matters, we propose to direct the Competent Authority to consider the cases of the Petitioners for grant of emergency parole for a period of more than what is already granted.

23 When emergency parole is to be granted in police escort, as clause (B) of Sub-Rule (1) of Rule 19 contemplates that the charges of the police escort will have to be borne by the prisoner, immediately

before passing an Order permitting him to be released on parole under police escort, the concerned prisoner must be communicated the approximate charges and expenses which will have to be borne by him.

24 Accordingly, we dispose of these Petitions by passing following the Order-

- a) In Both the Petitions, we direct the Competent Authority to consider the cases of the prisoners for grant of additional emergency parole in addition to parole granted for two days and one day respectively. Appropriate decision shall be taken by the Competent Authority immediately after receiving an authenticated copy of this Order from the office of the Public Prosecutor;
- b) We direct the State Government to take a policy decision/guidelines for laying down the rates of charges payable for grant of police escort to the prisoner who is ordered to be released on emergency parole in police escort;

- c) If the prisoner cannot afford to pay the amount indicated, he may be given choice to reduce the period of emergency parole;
- d) It is obvious that the rates fixed as per the Government Circular dated 16th November, 2018 which lays down the rates fixed for providing police security to the private persons are not applicable to the prisoners who undergoing sentence in the prison as they cannot be treated on *par* with the private persons who are given police security. Therefore, while framing the policy/guidelines, the State Government shall ensure that a decision is taken by treating convicted prisoners as a separate class from those private persons who are given police security on the basis of their own request;
- e) Necessary policy decision as aforesaid shall be taken by the State Government within a period of one month from today and shall be placed before the Court for its consideration;
- f) Till the policy decision is not taken, from the

prisoners who are granted emergency parole under police escort, the requisite charges shall be provisionally recovered which will be subject to the policy decision which will be taken by the State Government;

- g) For the Petitioner in Writ Petition No. 604 of 2019, the escort charges of Rs.54,105/- have been levied though deposit of Rs.70,000/- was taken from the prisoner. After the policy is framed, the State Government will have to reconsider the demand of amount of Rs.54,105/- which is taken from the Petitioner;
- h) The concerned Competent Authority shall decide the plea of the prisoners in both the Petitions for extending the period beyond two days and one day respectively. Their cases shall be considered even before a copy of this Order is uploaded;
- i) Though we are disposing of these Petitions, we direct the State Government to file compliance Affidavit placing on record the policy decision taken

for fixing the quantum of the charges of the police escort which is made available to the prisoner. Affidavit shall be filed on or before 18th March, 2019 for considering the compliance;

- j) These disposed of Writ Petitions shall be listed on board on 19th March, 2019, *for directions*.

(A.S. GADKARI, J.)

(A.S. OKA, J.)