

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

78. CRIMINAL APPLICATION NO. 1524 OF 2020
IN
WRIT PETITION No. 685 of 2020

Faruk S/o Mustak Khan
age major occup. Convict (Convict No. 5179),
R/o Convict of Open Prison, Paithan Dist. Aurangabad
...Applicant

VERSUS

The State of Maharashtra
Through : The Superintendent,
Open Prison, Paithan Dist. Aurangabad. ...Respondent

AND
79. CRIMINAL APPLICATION NO. 1525 OF 2020
IN
WRIT PETITION No. 667 of 2020

Bhausahab S/o Kondaji Randhir
age major occup. Convict (Convict No. 4848),
R/o Convict of Open Prison, Paithan Dist. Aurangabad
...Applicant

VERSUS

The State of Maharashtra
Through : The Superintendent,
Open Prison, Paithan Dist. Aurangabad. ...Respondent

AND
80. CRIMINAL APPLICATION NO. 1526 OF 2020
IN
WRIT PETITION No. 695 of 2020

Abhijit S/o Kalyan Warekar
age major occup. Convict (Convict No. 5207),
R/o Convict of Open Prison, Paithan Dist. Aurangabad
...Applicant

VERSUS

The State of Maharashtra
Through : The Superintendent,
Open Prison, Paithan Dist. Aurangabad. ...Respondent

AND

81. CRIMINAL APPLICATION NO. 1529 OF 2020

IN

WRIT PETITION No. 680 of 2020

Balu S/o Sidram Makase
age major occup. Convict
R/o Convict of Open Prison, Visapur
Taluka Shrigonda Dist. Ahmednagar ...Applicant

VERSUS

The State of Maharashtra
Through : The Superintendent,
Open Prison, Visapur Tal. Shrigonda Dist. Ahmednagar.
...Respondent

AND

82. CRIMINAL APPLICATION NO. 1530 OF 2020

IN

WRIT PETITION No. 629 of 2020

Jagdish S/o Sharnappa Kumasgi
age major occup. Convict
R/o Convict of Open Prison, Visapur
Taluka Shrigonda Dist. Ahmednager ...Applicant

VERSUS

The State of Maharashtra
Through : The Superintendent,
Open Prison, Visapur
Taluka Shrigonda Dist. Ahmednagar ...Respondent

AND
83. CRIMINAL APPLICATION NO. 1531 OF 2020
IN
WRIT PETITION No. 653 of 2020

Uttam S/o Anna Lande
age major occup. Convict (Convict No. 5149)
R/o Convict of Open Prison, Paithan
Dist. Aurangabad ...Applicant

VERSUS

The State of Maharashtra
Through : The Superintendent,
Open Prison, Paithan Dist. Aurangabad. ...Respondent

Mr. Rupesh A. Jaiswal, Advocate for applicants in all petitions.

*Mr. B.V. Virdhe, Addl. Public Prosecutor for Respt./State in
Cri.Applns. No. 1524/2020 & 1531/2020*

Mr. Y.G. Gujarathi, A.P.P. for Respt. in Cri.Appln. No. 1525/2020

Mr. G.O. Wattamwar, A.P.P. for Respt. in Cri.Appln. No. 1526/2020

Mr. P.N. Kutti, A.P.P. for Respt. in Cri.Appln. No. 1529/2020

Mr. R.B. Bagul, A.P.P. for Respt. in Cri.Appln. No. 1530/2020

CORAM : T.V. NALAWADE &

M.G. SEWLIKAR, JJ.

DATE : 14th September, 2020

ORAL JUDGMENT (PER : T.V. NALAWADE, J.)

1. Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.

2. All these proceedings are filed for the relief of direction to continue the parole already granted by this Court under the Notification of the Government dated 8th May 2020. The Notification is as under :

“ HOME DEPARTMENT

Mantralaya, Madam Cama Marg, Hutatma Raiguru Chowk,
Mumbai 400 032, dated 8th May, 2020

NOTIFICATION

PRISONS ACT, 1894.

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:-

“(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 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 MCOB, 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 "

3. In the past, this Court had occasion to interpret the aforesaid Notification in respect of period of parole in the case of ***Dinesh Vs. State and others in Cri. Writ Petition No. 578 of 2020, decided on 30th June 2020.*** In the Notification, it is mentioned that the initial period of parole will be 45 days and it shall stand extended periodically in blocks of 30 days each, till such time that the said notification is in force. This Court has laid down that the meaning of this provision is that there will be automatic extension of the parole period till the notification is in force. Even when such meaning is there and the interpretation is done by this Court, it appears that the respondents are asking the prisoners to give application for

extension every time for getting extension of parole. There is news item both in print media and electronic media that some persons had asked prisoners to give money either to accept their applications or for consideration of their application. When there is automatic extension of parole period, there is no need of giving application every time when parole period expires. In view of lock-down which was declared and the object behind the notification, no other interpretation is possible. It appears that there is also some wrong notion that when the Court has granted parole under order, the period mentioned in the order will come to an end and after that period application will be required. When order is made by the Court under the notification dated 8th May 2020, one needs to go with the presumption that such order is similar to the order made by the Prisoner Authority, Superintendent. Thus, in that case also, no application is required to be made by the prisoners for extension of parole period. So many applications are received of such nature by this Court and that has increased the work of this Court unnecessarily. This Court has already expressed that it is always open to the Government to withdraw the notification and call back the prisoners. That can be done but till the notification is there, the parole period will get extended automatically in view of the aforesaid

nature of the Notification. In the result, all these applications are allowed. It is hereby declared that the parole period automatically got extended in view of the wordings of the Notification. It is also hereby directed that the respondents are to see that no applications for extension of parole period are asked from any prisoner when the prisoners are released by Jail Authority under the notification or due to the order of this Court made under the Notification dated 8th May 2020. Unless the Court has specifically declared that beyond that period there will not be extension of the parole period, the authority needs to go with the presumption that there is automatic extension of the parole period.

4. Rule made absolute in aforesaid terms.
5. Copy of this order is to be sent to every Authority of the Jails which are within the local jurisdiction of this Court.
6. Authenticated copy of this order is allowed to both the sides.

(M.G. SEWLIKAR)
JUDGE

(T.V. NALAWADE)
JUDGE