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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4118 OF 2019
IN
CRIMINAL APPEAL NO.243 OF 2019

Nagnath s/o Sakharam Mane

APPLICANT

VERSUS

The State of Maharashtra and Another

RESPONDENTS

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Mr. Amit A. Yadkikar, Advocate for the applicant
Mr. A. B. Girase, Advocate appointed as *amicus curiae*
Mr. K. S. Hoke Patil, APP for respondent - State
Dr. S. D. Tawshikar, Advocate for respondent No. 2

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[CORAM : SUNIL P. DESHMUKH, J.
MANGESH S. PATIL, J. AND
R. G. AVACHAT, J.]

RESERVED ON : 15th DECEMBER, 2020

PRONOUNCED ON : 22nd DECEMBER, 2020

JUDGMENT (PER SUNIL P. DESHMUKH, J.):

1. Present referral has its origin in the order dated 5th November, 2020 in Criminal application No. 4118 of 2019 in Criminal Appeal No. 243 of 2019.

2. Under notification dated 8th May, 2020, in exercise of powers pursuant to clauses 5 and 28 of Section 59 of the Prisons Act, 1894 Government of Maharashtra, has promulgated "Maharashtra Prisons (Mumbai Furlough and Parole)

(Amendment) Rules, 2020, adding clause (C) after clauses (A) and (B) to sub rule (1) of Rule 19 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959.

3. Clause (C) added to Rule 19 (1) under the (Amendment) Rules, 2020 reads, thus,

“ (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. ”

4. With reference to aforesaid amendment to rule 19, an order had been passed on 30th June, 2020 by a division bench of this court in Criminal Writ Petition No. 578 of 2020 “*Dinesh s/o. Arjunsing Thakur Versus The State of Maharashtra and another*”, holding that there is automatic extension of parole beyond forty five days and the extension does not require a separate application or permission or an order.

5. An order came to be passed by another division bench in Criminal Writ Petition No. 790 of 2020 “*Sonu S/o. Chandrakant Shrinath Versus The State of Maharashtra and Another*”, on 7th August, 2020 wherein it has been considered that petitioner would have to make an application for extension of emergency parole before expiry of forty five days and could not avoid reporting back to

prison on the pretext of pendency of application for extension beyond forty five days.

6. A division bench at the principal seat on 13th August, 2020 in Criminal Writ Petition No. ASDB-LD-VC No. 235 of 2020 “*Jafar Shaikh Versus State of Maharashtra*” in its order has observed that object behind promulgation of Rules of 2020 is to ensure safety of inmates as well as prison staff by de-congesting the prisons and, thus, benefit of the rule would not be declined taking a hyper technical view, frustrating the purpose underlying the rule and further had directed the Superintendent of Yerwada Central Prison to pass appropriate orders regarding extension of emergency parole in accordance with Rules of 2020, while the notification continues to operate on the day said period of forty five days expired.

7. The division bench, which decided *Sonu Shrinath (supra)* in yet another case bearing Criminal Writ Petition No. 866 of 2020 “*Niteen s/o Shamrao Samudre Versus The State of Maharashtra and Anr*”, in its order dated 18th August, 2020 has observed that subject to rights of petitioner to seek extension of emergency parole, he shall report back to prison on or before forty fifth day and shall not remain away from the prison on the pretext of application for

extension of emergency parole being pending.

In Criminal Writ Petition No. 705 of 2020 *“Pratap Dinkar Chavan Versus State of Maharashtra and another”*, aforesaid division bench has, under order dated 21st August, 2020, observed that rule 19 (1) (C) was not aimed at emptying but the object is to decongest prisons so that eligible prisoners could be released on emergency parole and prison authorities can manage health and hygiene of rest of the prisoners to prevent corona virus entering prisons.

8. In Criminal Application No. 1524 of 2020 *“Faruk S/o Mustak Khan Versus The State of Maharashtra”*, on 14th September, 2020, the division bench which decided *Dinesh Thakur (supra)* has observed, it has been mentioned in the notification that initial period of emergency parole will be forty five days and it shall stand extended periodically in blocks of thirty days each, till such time that the the notification is in force, meaning thereby that there would be automatic extension of emergency parole till the notification is in force and despite this, it has further been observed that, the authorities were demanding applications for every extension.

9. In another case at the principal seat in Criminal Writ

Petition stamp No. 3027 of 2020, “*Dhananjay S/o. Rajaram Dighe Versus The State of Maharashtra*”, a division bench under its judgment and order dated 29th October, 2020 let the prisoner’s release on emergency parole imposing conditions ensuring that he will surrender upon expiry of emergency parole period.

10. Thus, division bench referring the issues considered that the decisions and discussions thereunder do not converge and appears to have revisited the amended provision, Rule 19 (1) (C) and in its order dated 5th November, 2020 in Criminal Application No. 4118 of 2019 refers to have perceived that two sentences in the same, would not be said to be consistent, and has felt that the second one runs contrary to the intent under the first and, thus, formulated issue No. 1, as under-

Issue No. 1:

“ *Whether the first sentence in Rule 19 (1) (C) (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" is inconsistent to the subsequent sentence "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), thereby leading to an anomalous situation? ”*

11. Further, the division bench has observed that, decisions in *Dinesh Thakur (supra)*, *Sonu Shrinath (supra)*, *Jafar Shaikh (supra)* and *Dhananjay Rajaram (supra)*, not to be on the same page as to whether there should be application for extension of emergency parole by prisoner.

12. The division bench, referring to order passed by the Supreme Court in *Suo Motu Writ Petition (C) No. 1 of 2020* on 23rd March, 2020, as well as its order dated 13th April, 2020 considered that focus of the Supreme Court has been on decongesting and had not intended absolute vacation of prisons. It has also considered that having regard to second proviso to rule 24-A, notwithstanding deletion of rule 25, a prisoner who avails emergency parole under rule 19 (1) (C) may have to move a formal application expressing desire to have extension of emergency parole and, as such, formulated following question, referring to it as issue No.2, reading, thus,

Issue No. 2:

“ *Considering the effect of the second proviso and the undertaking mandated under Rule 24A read with Rule 27 (2) and the first sentence under Rule 19 (1) (C) (i) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, whether a prisoner would have to make an application for seeking extension of the emergency parole leave prior to the completion of his period of such leave granted under Rule 19 (1) (C) (i) ? ”*

13. Mr. Amit Yadkikar, learned advocate appearing for the applicant, has taken us through provisions of Epidemic Diseases Act, 1897, (ED Act) and submitted that while the State Government had issued notification under the ED Act, pursuant to its empowerment under section 59 Prisons Act, 1894 and rules 5 and 28, the State government has introduced amendment into Rule 19 by (Amendment) Rules of 2020.

14. He submits that first sentence of amended clause 19 (1) (C) (i) deals with granting of emergency parole for a duration of forty five days and its curtailment in the event of notification being withdrawn earlier. He submits that the emergency parole's initial period is intended to be co-terminus with withdrawal of notification earlier in case spread of pandemic would be contained or controlled or eradicated during initial restricted period of forty five days and, thus, the phrase 'whichever is earlier'. In the case otherwise, if threat of pandemic could not be contained, controlled, the second sentence envisages possibility of notification being not withdrawn before expiry of forty five days. The subsequent sentence would come into operation taking care of such eventuality and, thus, it is intended to continue emergency parole further over forty five days. The first sentence is meant to govern one situation, and the second one,

the other and the second appears to undo necessity of a separate application for extension of emergency parole. As such, two sentences comprising rule 19 (1) (C) (i) would not be said to be contrary to each other.

15. On the other hand, Mr. Girase, learned *amicus curiae* who had assisted the division bench referring the issues in its decision of 5th November, 2020, purports to refer to rules 21 to 27 of Furlough and Parole Rules of 1959 and submits that while an application is required for initial emergency parole, aforesaid catenating rules provide for procedure while considering the same, may be for imposition of certain conditions including that of reporting back / surrender on or before due date and provides for penal action in case of failure to abide by the stipulations and conditions. It implies an order by competent authority in tune with the provisions of rules, which may include the restriction of forty five days for return of prisoner or even before, on withdrawal of notification and with a condition to that effect in the release order, the prisoner would be bound by the same and, as such, it would be rationally logical, he would have to formally tender an application for extension of emergency parole, lest he would be under the threat of penal action pursuant to rest of the procedural rules, vide note under rule 22 and provisos to rules

24 and 24-A and an application may forestall such action although the same may not be expressly seen in the second sentence.

16. Dr. Tawshikar, learned advocate appearing for original complainant, submits that parole, emergency or otherwise, in any case, is a concession to a prisoner and thus, to avail of concession and to have assurance of his return a stricter procedure would be proper and submits that though ostensibly the language appears not to suggest the same, yet, subsequent procedural rules do and the object underlying imposition of conditions as well is to ensure the same. He, thus, urges to put a construction on the rule, accordingly.

17. Learned AGP Mr. K. S. Hoke Patil submits that the rules will have to be construed in the manner which will propagate the underlying object in bringing in amendment to the rules.

18. The COVID-19 pandemic has given rise to exigent situation and, it is discernible, has triggered exercise of legislative powers with a view to prevent, control, reduce the threat of epidemic/pandemic. The State Government has issued notification in exercise of its powers under section 2 of the ED Act.

19. In the wake of the notification under the ED Act, the State purports to adapt to occurrences of epidemic/pandemic, and with a view to carry out and follow underlying purpose of the notification meaningfully, has been live to that certain measures would be called for and would be required to be taken, *inter alia*, to maintain health and hygiene in prisons and to prevent outbreak and/or spread of epidemic diseases into prisons.

20. The State government invoked its powers under section 59 (5) and (28) of Prisons Act, 1894, issuing notification dated 8th May, 2020 introducing clause (C) into Rule 19 of Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 as referred to above earlier.

21. Before promulgation of notification dated 8th May, 2020 amending rule 19, Rule 19 (1) read, thus,

“ 19. When a prisoner may be released on parole.

(1) *Emergency Parole* –

(A) *All convicted prisoners may be eligible for emergency parole for following reasons-*

(a) *Death of parental grandfather or grandmother/father/mother/spouse/son/daughter/brother/sister:*

(b) *Serious illness of father/brother/sister.*

(B) (a) *Emergency Parole may be granted for the maximum period*

of seven days at a time on confirmation of emergency situation.

(b) No extension can be granted to emergency parole. ”

22. It, thus, can be seen, specific grounds/reasons for release on emergency parole relatable to individual prisoner are enumerated under sub clauses (a) and (b) of clause (A) of sub rule (1) of Rule 19. Sub clauses (a) and (b) of clause (B) relate to limitation on period of emergency parole.

23. Present pandemic has forced the State to take cognizance of need of emergency parole for other than personal grounds/reasons and to make a provision for the same and clause (C) is an additional ground/reason introduced, into aforesaid Rule 19 (1) as appended to subsisting clauses (A) and (B).

24. In the field of interpretation, primary rule is literal construction under which it is to be considered that intention is what has been actually expressed in the language. Belief and assumption of a person and/or desirability or undesirability of one conclusion as compared with another may not furnish a proper guide. Where clear and unequivocal language capable of only one meaning is enacted, it must be enforced, however, hard, harsh or contrary to one's beliefs, the rule may be.

Interpretation of a provision is not to be collected from any notion which may be entertained by the court as to what is just and expedient.

25. The corollary is, nothing is to be added or taken out from a legislation. Every word used in the legislation is to be given meaning. The golden rule is to adhere to the ordinary meaning of the words used and to the grammatical construction, unless it is at variance with the intention and unless the same leads to manifest absurdity. Inconvenience, however great, would be of little consequence. The other rule is to avoid interpretation, which will reduce legislation to futility. Golden and harmonious construction rather be accepted based on the language used. From the alternatives, one which would be consistent with the smooth working and which the legislation purports to regulate should be chosen. One of aspects is to be purposive carrying forward underlying object.

26. These guiding tenets would be required to be kept in view, while dealing with the issues referred to us.

27. Addition of clause (C) to rule 19 (1) appears to be with a view to meet up with and adapt to purpose underlying the notification issued under the ED Act. Legislation appears to be

with a view to meet with exigencies impelling notification under the ED Act, whenever it would be issued. It appears, the provision would cover and is capable of taking within its fold variety of present, future and unforeseen epidemic/pandemic diseases in all cases of enforcement of notification under the ED Act. The provision does not appear to be an interim or temporary or ephemeral visualization of the measure. Amended rule does not appear to confine its operation to only present pandemic. It appears to have been introduced with a view that it would stay to take care of various epidemic eventualities, notwithstanding tapering out of present pandemic.

28. The legislation, to meet with the underlying object of the notification issued pursuant to ED Act, appears to provide for release of certain categories of prisoners as referred to under Rule 19 (1) (C) (i) and (ii) on emergency parole.

29. Plain reading of clause 19 (1) (C) (i) shows, it makes way for release of prisoners on emergency parole, falling in the categories referred to, and the same would correspond to subsistence of notification issued under the ED Act.

30. The first sentence of the added provision to Rule 19, the clause (C) (i) reproduced herein before earlier, requires, rather

ordains the authority to favourably consider an application of eligible prisoner suffering sentence of seven years or less for releasing on emergency parole for a period of forty five days, and purports to put an end to emergency parole even before said period, with the withdrawal of notification under the ED Act.

31. Legislative authority, in its wisdom, likely to be based on some consideration and study, appears to have thought it appropriate to initially restrict the period of emergency parole to forty five days during which, if the epidemic could be controlled and arrested, and if the notification is not continued that long, in that case though initially parole would be operative for a period of forty five days, its period would be curtailed with withdrawal of the notification before said duration.

32. Legislation visualises another eventuality, it may be that the notification would not be withdrawn within forty five days. The second sentence is intended to meet with a situation where the notification continues to be in force beyond forty five days. In such a case, treatment to be given to subsequent period has been spelt out in the same, and the expression is in the words *viz; "The initial period of 45 days shall stand extended periodically in blocks of 30 days each till such time notification is in force"*, sounding mandatory intent underlying. Bracketed

portion in said sentence appears to be with reference to withdrawal notification contemplated under the first one.

33. It appears, duration of emergency parole of forty five days is not rigid and is flexed to contract with withdrawal of notification before forty five days under the operation of first sentence, whereas, in the event of no notification for withdrawal before forty five days and the notification under ED Act being in force exceeding said period, duration of emergency parole expands and elongates in packs of thirty days under operation of second sentence.

34. Emergency parole for the eligible prisoners would be available during the subsistence of the notification as is spelt out in the first sentence. The second one, as a matter of fact, endorses the same, and it further refers to that in case of subsistence of notification beyond forty five days, till it lasts, emergency parole would continue in blocks of thirty days each. Simultaneously, the provision as well under third sentence requires, prisoner released on emergency parole to attend the police station in each pack of thirty days.

35. The language used in the two sentences emanates nexus between duration of emergency parole and duration of

subsistence of notification under ED Act and the two sentences do converge on the same.

36. The two sentences in clause (i) cover eventualities *viz*; withdrawal of notification in less than forty five days and even lasting and enforcement of notification beyond said period. It emerges from the two sentences that the purpose is to release eligible prisoners on emergency parole during subsistence of notification under the ED Act. Two sentences operate in unimpinging spheres.

37. Genesis of the notification under the ED Act and the amendment to rule 19 lies in eruption of epidemic/pandemic. The legislative intent appears to be to meet with the situation where the notification under the ED Act would be operational.

In case epidemic does not subside within forty five days' period and the notification is required to be kept in force, and if the figure of 'forty five' appearing in the first sentence of clause (i), is to be construed to be maximum limit, very purpose and object underlying bringing in amendment may not be met with in all cases/situations/circumstances of epidemic/pandemic. One or two isolated cases in the prisons and/or present pandemic protocol requirements may not provide adequate guide to judge

underlying purpose of provision. The language in the provision does not purport to confine the measure only to de-congestion.

38. Going by the language and strictness under the second sentence, it appears that by statutory operation, the initial period parole gets extended in blocks of thirty days each, simultaneously the third sentence requires prisoner to attend police station in each block of thirty days.

39. Legislatively, emergency parole stands extended without intervention of authorities where the authorities have role to play in initially granting emergency parole, imposing conditions. Thus, it emerges that initial emergency parole on the conditions imposed by the competent authority, gets statutorily extended in blocks of thirty days.

While under the provision, no explicit overt and/or ostensible action for extension is required/contemplated from the prisoner out on emergency parole, the rigmarole of making application for extension and imposing conditions and seeking undertaking appears to have been eschewed, by statutorily extending the period of emergency parole in blocks of thirty days each during the subsistence/enforcement of the notification implying extension of the effect and operation of order upon an

application for emergency parole pursuant to the first sentence of clause (i) along with extension of operation of conditions.

Compulsive language in the provision, postulates under force of legislation, extension of operation of imposed conditions including period of reporting back/surrendering. Statutory expression does not warrant to deem that there should be explicit continuation and/or re-imposition of conditions on application for extension, as those axiomatically would stand extended. With a view to avoid the rigmarole on either side, prisoners as well as authorities, mandatory language appears to have been employed for extension of emergency parole.

As such, application for extension of emergency parole under rule 19 (1) (C) (i) does not appear to be a must.

40. Operation of rules 21 to 27 of the Rules of 1959 and notes and/or provision thereunder would have to be construed in harmony with Rule 19 (1) (C). Consequence of breach of order/condition/undertaking to return pursuant to order of emergency parole under said rule would not befall the prisoners as by operation of the amended rule, emergency parole gets extended. Operation of rules including about penal consequences will have to be construed, which will harmonize the intendment

underlying. The provision posits that the prisoner on parole pursuant to rule 19 (1) (C) (i) not reporting back/returning/surrendering on the due date in the initial order, under domain of amended rules would not be required to face the action. Simultaneously, the prisoner on emergency parole is obligated to attend police station in the area in the packs of thirty days under the third sentence.

41. It emerges that –

- (a) there is no incompatibility in the two sentences of Rule 19 (1) (C) (i) as perceived under referring judgment. Concatenation of the notification under the ED Act and period of emergency parole under the rule would reveal that the two sentences would not be said to be in disharmony and the first one does not appear to be inconsistent with subsequent sentence in the context of their operation and would not lead to anomalous situation.
- (b) it is not that necessarily prisoner would have to make an application seeking extension of emergency parole prior to completion of initial parole of forty five days as well as even for further extensions in blocks of thirty days till the notification under the ED Act is in force.

42. Issues referred to us are answered as under:

1. Foregoing discussion leads us to an end wherein we find that the two sentences in Rule 19 (1) (C) (i) would not be inconsistent in their operation and there would be no anomaly.

2. Under the language employed in the text of rule 19 (1) (C) (i) in second sentence, by auto operation the emergency parole gets extended obviating an application for its extension.

SUNIL P. DESHMUKH, JUDGE

MANGESH S. PATIL, JUDGE

R. G. AVACHAT, JUDGE

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