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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION (STAMP) No.3206 of 2020

Pintu S/o. Uttam Sonale (C-10855))
Age: 31 years, Occ.: convict)
R/o.Mantha, Tal. Hathgaon, Dist.Nanded)
at present confined at Central Prison Nasik) ... **Petitioner**
Vs.
The State of Maharashtra through)
Superintendent Nasik Central Prison, Nasik) ... **Respondent**

Mr.Rupesh Jaiswal for Petitioner.
Mr.Deepak Thakare, PP with Mr.J.P. Yagnik, APP for State.

CORAM: **K.K.TATED,**
G.S. KULKARNI &
N. R. BORKAR, JJ.

DATED : **NOVEMBER 6, 2020**

Judgment : (**Per G.S.Kulkarni, J.**)

1. The petitioner in the above Criminal Writ petition approached the Division Bench praying that he be released on emergency (COVID-19) parole. The petitioner is convicted for an offence punishable under Section 376 of the Indian Penal Code and Sections 3, 4 and 5 of the Protection of Children against Sexual Offences Act, 2012 (for short '**the POCSO Act**'). The prayers of the petitioner before the Division Bench were taking recourse to the recent amendment brought about to Rule 19 (1) of the Maharashtra Prisons

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(Bombay Furlough and Parole) Rules, 1959 (for short "**the 1959 Rules**"), effected vide Government Notification dated 8 May 2020. By this amendment sub-rule (C) of Rule 19(1), came to be incorporated so as to make a provision for release of convicted prisoners on emergency parole, which was in pursuance of the notification issued by the State Government under the Epidemic Diseases Act, 1897.

2. The petition was heard by the Division Bench of this Court which noted different orders passed by the co-ordinate Benches, on similar pleas and more particularly in the following cases:-

(i) ***Vijendra Malaram Ranwa vs. State of Maharashtra & Anr.***[1]
(ii) ***Sardar s/o. Shawali Khan Vs. The State of Maharashtra & Anr***[2]
(iii) ***Shubham s/o. Devidas Gajbhare Vs. The State of Maharashtra***[3]**;**
(iv) ***Kalyan s/o. Bansidharrao Renge Vs. The State of Maharashtra & anr.***[4]

3. The Division Bench considering the above decisions as also the observations of the Division Bench of this Court in ***National Alliance for People's Movements vs. The State of Maharashtra & Ors.***[5] was of the opinion that there is an apparent conflict in the decision rendered by the Division Bench in ***Vijendra Malaram Ranwa*** (supra) case and the one decided by the co-ordinate Bench in the case of ***Sardar s/o. Shawali***

1 Cri.LD-VC WP no.112/2020-Nagpur Bench dt.14.07.2020
2 Cri.WP no.520/2020 (Aurangabad Bench) dt.09.09.2020
3 Cri.WP.no.1135/2020(Aurangabad Bench) dt.13.10.2020
4 Cri.WP no.ASDB-LD-VC-265/2020, order dt.28.8.2020
5 2020 SCC OnLine Bom 843

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Khan (supra). The Division Bench observed that in these cases the Courts were concerned, with the prisoners being convicted ineralia under POCSO Act and in the other under the Terrorist and Disruptive Activities (Prevention) Act (for short "**TADA**"). Both of which were special Acts. These Acts were not specifically referred under the proviso to the amended Sub-rule (C) as incorporated by a Notification dated 8 May 2020. However, in these cases the concerned Division Benches resorted to different interpretations of the proviso incorporated under sub-rule 19(1)(C)(ii). In ***Vijendra Malaram Ranwa's*** (supra) case, the Division Bench observed that considering the language of the proviso an emergency parole can be granted to the petitioner convicted under the POCSO Act, whereas in ***Sardar s/o. Shawali Khan*** (supra) case the Division Bench also interpreting the said proviso did not accept that the case of the petitioner would be covered for grant of emergency parole.

4. On the above backdrop the Division Bench hearing the present writ petition opined that there is a conflict in these two decisions of the Division Bench and a reference of the petition to a full bench was necessitated. The observations of the Division Bench in paragraphs 19 to 21 are required to be noted which read thus:-

> "19. We are of the opinion that the decision rendered in the case of National Alliance for People's Movements (supra) has an important bearing on the issue raised in this Petition. We also notice that there is an apparent conflict in the decision rendered by the Division Bench in Vijendra Malaram

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> Ranwa's case and the one decided by the Co-ordinate Bench in the case of 'Sardar s/o. Shawali Khan'. Like the 'TADA', 'POCSO' is a Special Act. In 'Vijendra Malaram Ranwa's case it is held that as the offence under POCSO Act is not mentioned in the proviso which bars for grant of parole, the petitioner is entitled for release on emergency parole. However, in 'Sardar s/o. Shawali Khan' this Court was of the opinion that the words used in proviso are "like and etc.", thus, the list of Special Acts given in the Notification is not exhaustive and other special enactments which are similar in nature needs to be considered and the authority has the power to say that TADA convict is also not entitled to get the benefit of Government Notification dated 8th May, 2020.
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> 20. It is thus seen that the POCSO Act too is a Special Act like TADA. The decision in 'National Alliance for People's Movements' has already stated the purpose for which the Special Acts were enacted. In Clause (x) of the paragraph 22 it is mentioned that the POCSO Act was enacted to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto. The purpose for which TADA was enacted as the Special Act is also discussed.
>
> 21. No doubt, 'Vijendra Malaram Ranwa's' case dealt with the offences punishable under POCSO Act whereas 'Sardar s/o. Shawali Khan' dealt with offences punishable under TADA. Both being special Acts, we find conflicting decisions in 'Vijendra Malaram Ranwa' & 'Sardar s/o. Shawali Khan'. In view of this conflict, a reference of the present Petition to a Full Bench is necessitated. The issue 'whether a prisoner convicted under the Special Act viz. POCSO Act is eligible to be released on emergency (Covid-19) parole in terms of Rule 19 (1) (c) of the said Rules', in our opinion, needs to be authoritatively settled in view of the difference of opinion. The office to place the matter before the Hon'ble Chief Justice on the administrative side."

5. In pursuance of the above order of the Division Bench, Hon'ble Chief Justice was pleased to constitute the present Full Bench. By our order dated 3 November 2020 we have framed the following questions which would arise for determination of this Larger Bench:-

> "(i) Which of the interpretation of Rule 19(1) sub-rule (C) as brought about by the Maharashtra Prisons (Mumbai Furlough

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> and Parole (Amendment) Rules, 2020, either as made in decision of the Division Bench in Vijendra Malaram Ranwa vs. State of Maharashtra & Anr or the decision of the Division Bench in Sardar s/o Shawali Khan vs. The State of Maharashtra & Anr, is the correct interpretation?
>
> (ii) Whether the provisions of 'emergency parole' as brought about by the amendment to Rule 19 (1) by insertion of sub-rule (c) by the Maharashtra Prisons (Mumbai Furlough and Parole (Amendment) Rules, 2020 would cover prisoners convicted under the provisions of the Protection of Children against Sexual Offences Act, 2012 (for short 'the POCSO Act;)"

6. To decide these questions, some background is required to be noted leading to the amendment to Rule 19 of the said Rules.

7. The Supreme Court (in Suo Motu Writ petition (C) No.1 of 2020) in the light of the health crises arising due to Corona Virus (COVID-19) raised a concern *interaila* with the state of the inmates of 'prisons' and 'remand homes' so that care can be taken for protection and welfare of the prisoners to restrict transmission of COVID-19. The Court considered the issue of overcrowding of prisons as a matter of serious concern in the context of the present pandemic. Having regard to the provisions of Article 21 of the Constitution of India, it was observed that it had become imperative to ensure that spread of corona virus within the prison is controlled. The Supreme Court accordingly directed the State/Union Territories to constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services

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Committee, (ii) the Principal Secretary (Home/Prison), (iii) Director General of Prison, to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. The Court left it open to the High Power Committee to determine the category of prisoners who should be released on parole or on interim bail depending upon the nature of the offences, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

8. In pursuance of the above directions of the Supreme Court, the State Government on 25 March 2020 constituted a High Power Committee. The High Power Committee held its meeting on 25 March 2020 interalia determining *"which class of prisoners can be released on parole or on interim bail"* for such period as may be thought appropriate and *"the category of prisoners who should be released".* After considering all the relevant factors as also the circumstances prevailing in the State of Maharashtra, the Committee interalia laid down the following norms, the relevant being in paragraph 8(iii) and (iv) which read thus:-

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> "iii) The convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough), for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such that the said Notification is issued (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 every 30 days.
>
> iv) The aforesaid directions shall not apply to undertrial prisoners or convicted prisoners booked for serious economic offences / bank scams and 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 CrPC) AND also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra."

9. On 8 May 2020 the State Government in exercise of the powers conferred by Clause (5) and Clause (28) of Section 59 of the Prisons Act (Act no.IX of 1894) notified the **Maharashtra Prisons (Bombay Furlough and Parole) (Amendment) Rules, 2020**, so as to incorporate an amendment to sub-rule (1) of Rule 19 by insertion of clause (C) so as to make a provision for 'emergency parole' in view of the declaration by the State Government of a pandemic under the Epidemic Diseases Act, 1897. The amendment so made by incorporating rule (C) along with a proviso and its interpretation is the principal controversy. Rule 19(A) (C) as inserted by the amendment is required to be noted which reads thus:-

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> "[19. When a prisoner may be released on emergency parole:-
> (1) **Emergency Parole** -
>
> (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 release (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." (emphasis supplied)

10. Thereafter another meeting was held of the High Power Committee on 11 May 2020 in pursuance of the report dated 10 May

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2020 of Shri. Sunil Ramanand, Additional Director General of Police and Inspector General of Prisons, to consider the recommendations for release of further categories of prisoners mentioned in the said report. The recommendations were for release of all 'undertrial prisoners' charged for the offences punishable under seven years or more, which may not be too relevant in the context of the prisoners who stood already convicted and were suffering sentence, for the offences for which the conviction was above seven years. However it needs to be noted that in paragraph 5(1) of the minutes of the said meeting, the Committee referred that an exception be made to grant interim bail to the under trial who fell in the following categories of offences:

(1) Indian Penal Code
- a) IPC – Chapter VI –Offenses against State– IPC 121 to 130
- b) IPC – 303
- c) IPC – 364(A), 366, 366(A), 366(B), 367 to 374
- d) IPC – 376(t) to (e)
- e) IPC – 396
- f) IPC 489(a) to (e)
- g) Bank Frauds and Major Financial Scams

(2) SPECIAL ACTS
- a) MCOC, TADA, POTA, UAPA, PMLA, Explosives Substances Act, Anti Hijacking Act
- b) NDPS (Other than personal consumption)
- c) MPID
- d) POCSO
- e) Foreigners in Prison."

11. On the above conspectus the issue which arises before us is in regard to the interpretation of the proviso to sub-rule (C) of Rule

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19(1) namely as to whether the provisions of sub-rule (C) would be applicable to the prisoners convicted for serious offences under Special Acts other than those specified in the proviso namely the POSCO in the present case. This more particularly when the proviso uses the words **"like"** and **"etc."**.

12. As noted above the Division Bench in ***Vijendra Malaram Ranwa*** (supra) dealing was with the case of the petitioner who was convicted of offences under Section 6, 10, 12 of POCSO Act and Section 77(1) and 77(2) of the Indian Navy Act. The Division Bench noting the language of the proviso held that there should not be any impediment for releasing the petitioner on parole. In paragraph (9) of its order the Court observed as under:-

> "9. Considering the language of proviso of Notification dated 8th May 2020 and particularly in view of the fact that the offence under the POCSO Act is not mentioned in the proviso, which bars for grant of parole, there should not be any impediment in releasing the petitioner on parole."

13. In **Sardar s/o. Shawali Khan'** case (supra) another Division Bench in which the petitioner was convicted under the Terrorist and Disruptive Activities (Prevention) Act (for short '**TADA**'), however opined that the petitioner would not be entitled to the benefit of amended sub-rule (C) in Rule 19(1) of 1959 Rules. It was observed that although TADA

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was not mentioned in the proviso, nonetheless considering the nature of the Special Acts as set out in the proviso a list of which was not exhaustive, other special enactments which are similar in nature can be considered and authority would have power to observe that the TADA convicted would not get benefit of the Government Notification dated 8 May 2020. The following observations as made by their Lordships are required to be noted which reads thus:-

> "5. In the present matter, the petitioners are claiming the benefits of the Government Notification dated 8th May, 2020. In the said notification, there is a proviso and the said proviso is that the prisoners convicted for serious economic offences or bank scams or offences under Special Acts (other than Indian Penal Code) like MCOC, PMLA, MPID, NDPS, UAPA, etc. (which provide for additional restrictions on grant of bail in addition to those restriction available under the Criminal Procedure Code, 1973) and also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra will not be entitled to get the benefit of this notification. Admittedly, the petitioners are the convicts under the provisions of TADA and they are sentenced to life imprisonment. Though specifically TADA is not mentioned in the notification, the Special Acts are mentioned in minutes of meeting of High Power Committee, dated 10th May, 2020. In the amendment to the Rule 4 of the Rules, in clause No.12, it is mentioned that prisoners, who are considered dangerous or have been involved in serious prison violence and who are convicted under Special Acts like Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS), rape, etc. are not entitled to get the benefit of Rule 4. Rule 4, initially there was no category like pandemic situation created by COVID-19 virus. Only due to Government Notification dated 8th May, 2020, the prisoners can be considered for giving them emergency parole and such parole is subject to the condition mentioned in the notification itself. In view of this circumstance and aforesaid provisions, it cannot be said that vested right is given to the prisoners to get parole and some definite exceptions are created by the State. The words used in proviso are "like and etc.". Thus, the list of Special Acts given in the notification is not exhaustive and other special enactments which are similar in nature need to be considered and the authority has the power to say that TADA convict is also not entitled to get the benefit of Government Notification dated

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> 8th May, 2020. For all these reasons, this Court hold that there is no need to interfere in the order made by the respondent. In the result, both the petitioners stand dismissed."

14. There are two other orders which are required to be referred. In ***Shubham s/o. Devidas Gajbhare's*** case (supra), the petitioner was convicted for the offence punishable under Section 363, 366A and 376A of the Indian Penal Code. The Division Bench in its order dated 13 October 2020 considering Rule 19 (1)(C) as also provisions of Rule 4(21) of the 1959 Rules observed that as there was a conviction for sexual offences against minor then benefit of furlough cannot be given to such prisoners. On this interpretation the Division Bench upheld the orders passed by the Superintendent of Prisons, rejecting the application of the petitioner for emergency parole.

15. In yet another case in ***Kalyan s/o. Bansidharrao Renge*** (supra) the Division Bench was considering the case of the petitioner who was convicted for the offence punishable under Section 376(2)(g) of the Indian Penal Code and who was awarded rigorous imprisonment for 10 years. The Court considering sub-rule (C) inserted in Rule 19(1) of the 1959 Rules by a notification dated 8 May 2020, however, without rendering any specific interpretation of the said rule observed that the petitioner deserved to be released on emergency parole.

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16. These are the different interpretations as made on applicability of sub-rule (C) and its proviso as inserted in Rule 19(1) of the 1959 Rules. We may at the outset note that the parole and furlough Rules are part of the penal and prison system. It is well settled that parole cannot be claimed as a matter of right (**See: Prahalad Dnyanoba Gajbhiye versus State Of Maharashtra 1996(1)BomCR 522**). In this context it would be imperative to note the observations as made by My Lord the Chief Justice in his concurring opinion in the decision of the Division Bench in the case of ***National Alliance for People's Movements*** (supra). His Lordship observed that the parole being a right traceable to statutory rule was an unacceptable proposition. It was observed that there is no right or entitlement that a jail inmate may claim to seek temporary release during the pandemic as if it was flowing either from Part III of the Constitution or any other statute. It was observed that the release for temporary period under parole was in the nature of special privilege and in the present circumstances conferred as also recognized under order dated 23 March 2020 of the Supreme Court (supra). His Lordship in paragraph 2.9 of the judgment observed thus:-

> "2.9. The first question is, therefore, answered against the petitioners by holding that there is no right or entitlement that a home inmate may claim to seek temporary release during the pandemic merely based on the order dated March 23, 2020 of the Supreme Court; however, if the offence with which he has been charged or convicted is included in the

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> 'qualifying category' by the HPC, he has a right to claim the benefit of temporary release by the appropriate court / authority in the light of the HPC's determination as well as the overriding object of such release."

17. In paragraphs 4.4 and 4.5 His Lordship observed that the classification of the offences being characterized as anti-national-those aiming to destabilize the economy of the country and/or forming a potential threat to the unity, integrity and sovereignty of the nation and/or by their criminal acts making themselves liable to be proceeded under the special enactments was justified. There was manifestation of a fine balance in such classification. It was observed that also there are offences against women and children and thus the convicts for such offences became relevant as the aggravated offences cannot be overlooked and this was precisely why the HPC was guided to bear in mind the nature of the offence and the severity of the offence.

18. Now coming to Rule 19(1) of the 1959 rules which provides for emergency parole, it needs to be noted that sub-rule (A) provides for release on emergency parole in case of death and marriage of the persons as specified. Sub-rule (B) provides for emergency parole for the reason of death and for the reason of marriage of the persons so specified and the 'Authority' approving emergency Parole in the relevant case shall decide whether to grant parole under police escort or with

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other conditions. Sub-rule (C) as inserted by the amendment vide notification dated 8 May 2020 now provides for emergency parole in view of declaration of epidemic by the State Government under the Epidemic Diseases Act, 1897. It categorises in Rule C(i) convicted prisoners whose maximum punishment is 7 years or less who can apply to be released on emergency parole which can be granted for 45 days and for further period as specified. Rule C(ii) speaks of emergency parole to be granted for convicted prisoners whose maximum sentence is above 7 years, who can be released on emergency parole by the Superintendent of Prison, if the convict had returned to prison on time on last two releases (whether on parole or furlough). The "proviso" below Rule C(ii) provides that the directions in Rule C(ii) "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.

19. In our opinion the language of the proviso clearly sets out that the provisions sub-rule (C) of Rule 19(1)of the 1959 Rules, would

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not apply to the prisoners convicted for various economic offences or bank scams or offences under some Special Acts (other than IPC) and some of which are illustratively mentioned by using the word “like” when the proviso refers to the Special Acts namely MCOC, PMLA, MPID, NDPS, UAPA etc. This illustrative reference is further qualified by use of the word “etc” which indicates that the reference to these Special Acts is not exhaustive. The proviso using the words “like” and “etc” is a significant indication of the legislative intent. The intention and object to insert the proviso appears to be quite clear that the provisions of the emergency parole as introduced by sub-rule (C) would not apply to the prisoners convicted of serious offences under the different Special Acts and who fall within the category as specified in sub-rule C(ii).

20. The reference as made in the proviso to certain Special Acts is certainly not exhaustive and it would include within its ambit other similar Acts where the offences are serious. The reference to Special Acts like MCOC, PMLA, MPID, NDPS, UAPA is required to read e*jusdem generis*. We have no doubt in our mind that the prisoners who are convicted under the Special Acts although not specifically referred in the proviso and those falling under sub-rule (C) (ii), by virtue of the proviso would not be covered within the ambit of sub-rule (C)(ii). It would be for the prison authorities to consider the seriousness of such

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offences under the Special Acts. The Court cannot be oblivious that when the accused is sentenced for seven years and above under the provisions of the POCSO Act, it is certainly a conviction for a serious offence affecting the society at large.

21. We may also note that even in case of eligibility for furlough as provided in Rule 4, the category of prisoners in Rule 4(12) and (21) are held not eligible for furlough. Rule 4(12) and 4(21) read as under:-

> "4. (12) Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak, riot, mutiny or escape, or who have been found to be instigating the serious violation of prison discipline, smuggling of narcotic and psychotropic substances including convicted under Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), rape or rape with murder, attempt to rape with murder and foreigner prisoners (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section);
>
> (21) Those involved in sexual offences against minor and human trafficking"

22. We are not inclined to accept the contentions as urged on behalf of the petitioner that merely because the POCSO Act is not found in the special Acts as referred in the proviso, the prisoners convicted under the POCSO Act can avail benefit of emergency parole. The next contention as urged on behalf of the petitioner is that the notification itself is contrary to Rule 19. We are afraid that this contention cannot be

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accepted. The purpose of incorporating Rule 19(1) sub-rule (C) is completely different from what is provided for in sub-rule (A) and sub-rule (B), which is a special provision, incorporated in view of the declaration of epidemic by the State Government under the Epidemic Diseases Act,1897. The purpose being to grant benefit of this rule to a limited category of prisoners so as to avoid ill-effects of pandemic and consequent health hazards, however, with clear exception that sub-rule C(ii) would not be applicable when the category of prisoners is of prisoners convicted for serious economic offences or bank scams or offences under the Special Acts. Thus there is no substance in the contention as urged on behalf of the petitioner that the notification is in any manner contrary to the basic provision of Rule 19(A), (B). The amended rule in no manner takes away the discretion of the authority effecting these provisions so as to confer any vested right in the prisoners who stand convicted of serious offences.

23. The next contention as urged on behalf of the petitioner is in the context of the words as appearing in the bracketed portion of the proviso namely “additional restrictions on grant of bail in addition to those under the Code of Criminal Procedure, 1973”. This submission on behalf of the petitioner cannot be accepted for more than one reason. In our considered opinion, the proviso would be required to be read in

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its entirety so as to discern which category of convicts and under what offences are excluded from the benefit which may be available in sub-rule (C) (ii). These are prisoners convicted for serious economic offences (enactment not specified) or prisoners convicted in bank scams (enactment not specified) and thereafter offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA, etc. are referred. It needs to be noted that under MPID, there is no additional restriction on the grant of bail in addition to those under the Cr.P.C. We cannot be unmindful that the Special Acts so mentioned in the proviso if read applying the principles of *ejusdem generis*, the common thread running through all these enactments is of the offences committed under these enactments being serious offences, affecting the society at large. This is the primary and principal focus to provide for the illustrative names of the special acts and to keep open inclusion of several other enactments which may be alike and dealing with serious offences. In our opinion, no other meaning can be attributed when the intention of the proviso itself is to keep open inclusion of other special acts without they being specifically referred in the proviso. We would hence read the proviso in its entirety so to gather the correct meaning of all the words. Thus in our opinion the words as appearing in the bracketed portion would not restrict the meaning and intention the proviso intends to achieve to make an exception from application of

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sub-rule (C)(ii) to those convicted for serious offences for a term of more than seven years.

24. We thus find that the intention is certainly not to classify the Special Acts only on the applicability of the words as used in the bracketed portion in the proviso but the primary focus of the proviso is to carve out an exception to applicability of sub-rule (C)(ii) for the prisoners who are convicted for serious offences as not only in the specified Special Acts but also under those Special Acts which are intended to be included within the proviso and not specially mentioned. In our clear opinion the Special Acts like POCSO and/or TADA are certainly required to be read in the proviso so as to make sub-rule (C)(ii) inapplicable to the category of convicts falling therein.

25. Mr.Yagnik, learned APP for the State would be justified in referring to the orders of the Supreme Court in the case of **National Alliance for People's Movements & Ors. Vs. The State of Maharashtra & Ors.**[6] rejecting the challenge to the decision of the Division Bench in the case in **National Alliance for People's Movements & Ors.** (supra). The Supreme Court has justified the categorization of offences/convicts as undertaken by the HPC, when the HPC has based such categorization

[6] Special Leave Petition (CRL) No.4116 of 2020

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on the seriousness of the offences having adverse impact on the society at large. The following observations of the Supreme Court are required to be noted:

> "12. ……. In that circumstance what has been curtailed by the HPC by excluding certain categories is only with a view to deny the benefit of certain category of jail inmates who are charged with serious offences which has an adverse effect on the society at large though the length of the punishment that can be imposed may be lesser. Such of those persons charged under the special enactments or convicted for a period, more than 7 years in any event if they are not otherwise disentitled to bail in a normal circumstance could still seek for bail in accordance with law and cannot treat the pandemic as fortuitous circumstance to secure bail to which they were otherwise not entitled to in law by claiming equal treatment. ……."

26. The avowed intention to have such proviso can also be gathered from what the Supreme Court has enunciated in commenting on such prisoners convicted for serious offences. The Supreme Court in **Asfaq v. State of Rajasthan and others**[7] has expressed a concern that when penal reforms are introduced, the State which runs the administration on behalf of the society and for the benefit of the society cannot be unmindful of safeguarding the legitimate rights of the citizens in regard to their security in the matters of life and liberty. The authorities cannot be oblivious of the obligation to the society to render it immune from those who are prone to criminal tendencies and have proved their susceptibility to indulge in criminal activities by being found guilty of having perpetrated a criminal act. It was observed that

[7] AIR 2017 Supreme Court 4986

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one of the discernible purposes of imposing the penalty of imprisonment is to render the society immune from the criminal for a specified period. It was thus observed that while meting out humane treatment to the convicts, care has to be taken to ensure that kindness to the convicts does not result in cruelty to the society. Their Lordships in paragraphs 17 and 18 made the following observations:-

> "17. Thus, not all people in prison are appropriate for grant of furlough or parole. Obviously, society must isolate those who show patterns of preying upon victims. Yet administrators ought to encourage those offenders who demonstrate a commitment to reconcile with society and whose behaviour shows that aspire to live as law-abiding citizens. Thus, parole program should be used as a tool to shape such adjustments.
> 18. To sum up, in introducing penal reforms, the State that runs the administration on behalf of the society and for the benefit of the society at large cannot be unmindful of safeguarding the legitimate rights of the citizens in regard to their security in the matters of life and liberty. It is for this reason that in introducing such reforms, the authorities cannot be oblivious of the obligation to the society to render it immune from those who are prone to criminal tendencies and have proved their susceptibility to indulge in criminal activities by being found guilty (by a Court) of having perpetrated a criminal act. One of the discernible purposes of imposing the penalty of imprisonment is to render the society immune from the criminal for a specified period. It is, therefore, understandable that while meting out humane treatment to the convicts, care has to be taken to ensure that kindness to the convicts does not result in cruelty to the society. Naturally enough, the authorities would be anxious to ensure that the convict who is released on furlough does not seize the opportunity to commit another crime when he is at large for the time-being under the furlough leave granted to him by way of a measure of penal reform."

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27. In view of the above discussion, we find ourselves in agreement with the view taken by the Division Bench in ***Sardar s/o. Shawali Khan'*** case (supra) as also with the view taken by the Division Bench in ***Shubham s/o. Devidas Gajbhare*** (supra) case . We accordingly answer the two question as framed by us as under :-

(Q-i) The decision of the Division Bench in ***Sardar s/o. Shawali Khan*** (supra) makes the correct interpretation of Rule 19(1) sub rule (C) of the 1959 Rules whereas the decision of the Division Bench in ***Vijendra Malaram Ranwa*** (supra) would not lay down the correct position in law on the interpretation of the said rule.

(Q-ii) The provisions of emergency parole as brought about by amendment to Rule 19(1) by incorporation of sub-rule (C) read with its proviso would cover prisoners convicted under the provisions of the Protection of Children against Sexual Offences Act, 2012.

28. Having determined both the questions as posed before this Court, office to place the criminal writ petition before the appropriate Bench.

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29. This order will be digitally signed by the Private Secretary / Personal Assistant of this court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(K.K. TATED, J.)

(G. S. KULKARNI, J.)

(N.R. BORKAR, J.)