

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

CRIMINAL WRIT PETITION NO. 617 OF 2021

Shivaji s/o Manik Nirmal : Petitioner
Age 56, Occu: Nil
R/o C-8142, Harsul Jail, Aurangabad

VERSUS

1. The State of Maharashtra ... Respondents
Through the Principal secretary
Home Dept. Mantralaya, Mumbai
2. Deputy Inspector fo Police (Prison)
Central Prison, Harsul,
Aurangabad
3. The Superintendent of Prison,
Central Prison, Harsul,
Aurangabad

Mr. A. P. Yenegure, Advocate for the petitioner
Mr. S. D. Ghayal, APP for the Respondents State

WITH

CRIMINAL WRIT PETITION NO. 442 OF 2021

Shivaji s/o Manikrao Nirmal : Petitioner
Age 56, Occu: Nil
R/o C-8142, Harsul Jail, Aurangabad

VERSUS

1. The State of Maharashtra ... Respondents
Through the Principal secretary
Home Dept. Mantralaya, Mumbai
2. Deputy Inspector fo Police (Prison)
Central Prison, Harsul,
Aurangabad
3. The Superintendent of Prison,
Central Prison, Harsul,
Aurangabad

Mr Sopan G.Bobde, Advocate for the petitioner
Mr. S. D. Ghayal, APP for the Respondents State

CORAM : V. K. JADHAV &
SHRIKANT D. KULKARNI, JJ.

DATE : 25th June, 2021.

ORDER:

1. Heard finally at admission stage by consent. Rule. Rule made returnable forthwith.
2. Both these writ petitions filed by the petitioner (Shivaji s/o Manik Nirmal, Convict No.8142) since involving a common question, taken together. The petitioner is the life convict in Sessions Case No. 191/2013 (Phulambri Police Station Crime No.28/2013) and he is in jail since 2013.
3. In terms of the amended Rule 19(1)(C)(ii) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, the respondent No.3 herein has released the petitioner / convict on Covid Emergency parole. However, while granting him Covid Emergency parole, the respondent / Superintendent of Central Prison, Aurangabad has directed the petitioner / convict to furnish two sureties for an amount of Rs.20,000/- (Rupees Twenty thousand only) in addition to the execution of the personal bond.
4. The respective learned counsel appearing for the petitioner / convict submit that the petitioner is poverty stricken person and due to financial weak position, he is unable to furnish two sureties as directed. The learned counsel appearing for the petitioner / convict submit that in addition to the same, due to outbreak of Covid-19, it is also not possible for the petitioner to furnish two sureties. There are travel restrictions inter-se districts and it is thus difficult for him to request the sureties to furnish the sureties for

him by crossing the distance. The learned counsel for the petitioner submit that even though there is no provisions and requirements in the Rules directing the petitioner / convict to furnish two sureties while granting Covid Emergency parole, however, the Superintendent of Police of Jail has directed the petitioner / convict to furnish two sureties. The learned counsel for the petitioner submit that the petitioner / convict may be granted Covid Emergency parole by relaxing the stringent conditions imposed by the respondent / Superintendent of Jail, Aurangabad directing him to furnish two sureties. The petitioner / convict is ready to furnish one surety of the like amount and in view of the same, the condition of furnishing two sureties as directed by the respondent / Superintendent of Jail may be modified to that extent.

5. The learned counsel for the petitioner / convict submit that on earlier occasion, this Court (Coram : Ravindra V. Ghuge and B. U. Debadwar, JJ.) by order dated 16.03.2021 in Criminal Writ Petition No.257 of 2021 and the Division Bench headed by (Coram : V. K. Jadhav and M. G. Sewlikar, JJ.) by order 09.03.2021 in Criminal Writ Petition No.340 of 2021 taken a similar view and modified the condition to the extent of one surety instead of two sureties.

6. The learned APP in submits that though the rule provides no specific requirement or guidelines or directions of furnishing two sureties by the convicts while releasing them on Covid Emergency parole, however, the same is left at the discretion of the authority concerned. The learned APP appearing for respondent-State in both the writ petitions has fairly

accepted that it was a requirement of furnishing two sureties in the notification issued by the Home Department dated 26.08.2016, however, in the notification dated 16.04.2018 issued by the Home Department, Mumbai omitted the said word "two sureties" and instead of that in Rule 24A, it is mentioned that "the parole may be granted to a prisoner subject to his executing a surety bond in Form A, a Personal Bond in Form B".

7. It thus appears that the respondent / Superintendent of Jail, Aurangabad in terms of the old notification dated 26.08.2016 has directed the convict to furnish two sureties while granting him Covid Emergency parole. The petitioner / convict is the poverty stricken person. He is in jail for a long period. It is thus difficult either for him or his relatives to make the arrangement of two sureties. On earlier occasion, this court, in the aforesaid two cases relied upon by the learned counsel appearing for the petitioner / convict, has relaxed the said condition and directed the petitioners / convicts therein to furnish one surety for an amount of Rs.20,000/- (Rupees Twenty Thousand Only) which should be an independent surety, not relative to the prisoners.

8. In view of the above, we are also inclined to take a similar view and decide these writ petitions in the similar manner. Hence, the following order :

ORDER

(i) Both the Writ Petitions are hereby allowed.

(ii) The impugned order is modified and the petitioner / convict is

directed to execute a Personal Bond of Rs.10,000/- and one surety of Rs.20,000/- which should be an independent surety, not relative to the prisoner.

- (iii) Rest of the conditions in the impugned order remained as it is.
- (iv) Rule made absolute in the above terms.
- (v) We quantify the fees for the appointed counsel at Rs.3,000/- (Rupees Three thousand only) in Writ Petition No. 617/2021 to be paid by the High Court Legal Services, Sub-Committee, Aurangabad.
- (vi) Both the Writ Petitions are accordingly disposed off.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

JPC