

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

912 CRIMINAL WRIT PETITION NO.630 OF 2021

Narendra Parasram Pawar,
Age : 45 years, Occu. Nil,
R/o at present Harsul Prison,
Tq. and Dist. Aurangabad. ... Petitioner.

Versus

1. The State of Maharashtra,
Through its Home Department,
Mantralaya, Mumbai.
2. The Superintendent
of the Central Prison, Harsool,
Tq. and Dist. Aurangabad. ... Respondents.

...
Advocate for Petitioner : Mrs. S. G. Sonawane (Appointed).
APP for Respondent/s-State : Mr. S. D. Ghayal.
...

AND

913 CRIMINAL WRIT PETITION NO.631 OF 2021

Sham Vishnu Yadav,
Age : Major, Occu. Nil,
R/o Central Prison Harsool, Aurangabad.
Convict No. C-8997 ... Petitioner.

Versus

1. The State of Maharashtra,
Through Secretary, Home Department,
Mantralaya, Mumbai 32.
2. The Superintendent,
The Central Prison Harsool,
Aurangabad. ... Respondents.

...
Advocate for Petitioner : Adv. K. A. Ingle (Appointed).
APP for Respondent/s-State : Mr. S. P. Deshmukh.

...

AND

914 CRIMINAL WRIT PETITION NO.632 OF 2021

Shaikh Kamal Shaikh Khaza,
(C. No.8540)
Age : Major, Occu. Nil,
R/o Aurangabad Central Prison, Aurangabad,
Tq. and Dist. Aurangabad. ... Petitioner.

Versus

1. The State of Maharashtra,
Through Secretary, Home Department,
Mantralaya, Mumbai-32.
2. The Superintendent
Central Prison, Harshul,
Tq. and Dist. Aurangabad. ... Respondents.

...
Advocate for Petitioner : Adv. G. D. Jain (Appointed).
APP for Respondent/s-State : Mr. G. O. Wattamwar.

...

AND

915 CRIMINAL WRIT PETITION NO.633 OF 2021

Suresh S/o Arjun Nikam,
Age : Major, Occu. Nil,
R/o Aurangabad Central Jail, Harsool,
Aurangabad, Dist. Aurangabad. ... Petitioner.

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Superintendent
Aurangabad Central Prison,
Aurangabad. ... Respondents.

...

Advocate for Petitioner : Adv. M. S. Karad (Appointed).
APP for Respondent/s-State : Mr. S. D. Ghayal.

...

AND

916 CRIMINAL WRIT PETITION NO.634 OF 2021

Manohar Kondiba Waghmare, (C/9264),
Age : Major, Occu. Nil,
R/o Aurangabad Central Prison,
Aurangabad. ... Petitioner.

Versus

1. The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai,
Mumbai-32.
2. The Superintendent
of Central Jail, Aurangabad,
Tq. and Dist. Aurangabad. ... Respondents.

...

Advocate for Petitioner : Mr. R. J. Nirmal (Appointed).
APP for Respondent/s-State : Mr. S. P. Deshmukh.

...

**CORAM : V. K. JADHAV, AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 23.06.2021

ORAL JUDGMENT (Per V. K. Jadhav, J.) :-

1. Heard finally at admission stage by consent. Rule. Rule made returnable forthwith.

2. All these writ petitions since involving a common question, taken together. The petitioners are the life convicts in connection with the crime / case and the details of their conviction and the period undergone by them till this date so far is mentioned in the following tabular form :

Sr. No.	Name	Convict No.	Period (Years-Months-Days)
1.	Narendra Parasram Pawar (WP No.630/2021)	C-9311	More than 5 years
2.	Sham Vishnu Yadav (WP No.631/2021)	C-8997	6Y., 9M., 10D.
3.	Shaikh Kamal Shaikh Khaza (WP No.632/2021)	C-8540	8Y., 2M., 29D.
4.	Suresh Arjun Nikam (WP No.633/2021)	C-9058	6Y., 3M., 18D.
5.	Manohar Kondiba Waghmare (WP No.634/2021)	C-9264	3Y., 8M., 18D.

3. In terms of the amended Rule 19(1)(C)(ii) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, the respondent No.2 herein has released the petitioners / convicts on Covid Emergency parole. However, while granting them Covid Emergency parole, the respondent / Superintendent of Central Prison, Aurangabad has directed the petitioners / convicts 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 petitioners / convicts submit that most of the petitioners are poverty stricken persons and due to financial weak position, they are unable to furnish two sureties as directed. The learned counsel appearing for the petitioners / convicts submit that in addition to the same, due to outbreak of Covid-19, it is also not possible for the petitioners to furnish two sureties. There are travel restrictions inter-se districts and it is thus difficult for them to request the sureties to furnish the sureties for them by crossing the distance. The learned counsel for the petitioners submit that even though there is no provisions and requirements in the Rules directing the petitioners / convicts to

furnish two sureties while granting Covid Emergency parole, however, the Superintendent of Police of Jail has directed the petitioners / convicts to furnish two sureties. The learned counsel for the petitioners submit that the petitioners / convicts may be granted Covid Emergency parole by relaxing the stringent conditions imposed by the respondent / Superintendent of Jail, Aurangabad directing them to furnish two sureties. The petitioners / convicts are ready to furnish one surety for 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 petitioners / convicts 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 all the cases 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 all writ petitions have 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 convicts to furnish two sureties while granting them Covid Emergency parole. Most of the petitioners / convicts are the poverty stricken persons. They are in jail for a long period. It is thus difficult either for them or their relatives to make the arrangement of two sureties.

Furthermore, in case of most of the petitioners / convicts there are only aged parents in the house. On earlier occasion, this court in the aforesaid two cases relied upon by the learned counsel appearing for the petitioners / convicts has relaxed the said condition and directed the petitioners / convicts 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 prisoner.

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

ORDER

- (i) All the Writ Petitions are hereby allowed.
- (ii) The impugned order is modified and the petitioners / convicts are 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 each of the Writ Petition to be paid by the High Court Legal Services, Sub-Committee, Aurangabad.
- (vi) All the Writ Petitions are accordingly disposed off.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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vmk/-