

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 CRIMINAL WRIT PETITION NO.703 OF 2021

Chapnya Nkulya @ Mahakulya Bhosle (C-8990)

Age 60 years, Occ. Nil,

R/o. At present Harsul Prison

Tq. and District Aurangabad.

...Petitioner

versus

1. The State of Maharashtra
Through its Home department
Mantralaya, Mumbai

2. The Superintendent of the
Central prison, Harsool,
Aurangabad, Dist. Aurangabad

...Respondents

.....
Advocate for Petitioner : Ms. Chate Sharada P.
APP for Respondent-State: Mr. S. P. Deshmukh
.....

**CORAM : V. K. JADHAV AND
S. G. DIGE, JJ.
DATED : 2nd JULY, 2021**

ORAL JUDGMENT:- (PER V. K. JADHAV, J.)

1. Rule. Rule made returnable forthwith. By consent, heard finally at admission stage.

2. The petitioner is a life convict for the offence punishable under Section 302 of I.P.C. and till today he has undergone five years imprisonment.

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 petitioner on Covid Emergency parole.

However, while granting him Covid Emergency parole, the respondent / Superintendent of Central Prison, Aurangabad has directed the petitioner to furnish two sureties for an amount of Rs.20,000/- (Rupees Twenty thousand only) in addition to the execution of personal bond.

4. The learned counsel appearing for the petitioner submits that the petitioner is a poverty stricken person and due to weak financial position, he is unable to furnish two sureties as directed. The learned counsel appearing for the petitioner submits 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 sureties for him by crossing the distance. The learned counsel for the petitioner submits that even though there is no provision and requirement in the Rules directing the petitioner to furnish two sureties while granting Covid Emergency parole, the Superintendent of Jail has directed the petitioner to furnish two sureties. The learned counsel for the petitioner submits that the petitioner may be granted Covid Emergency parole by relaxing the stringent condition imposed by the respondent / Superintendent of Jail, Aurangabad directing him to furnish two sureties. The petitioner is 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 petitioner submits 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 (Coram : V. K. Jadhav and M. G. Sewlikar, JJ.) by order 09.03.2021 in Criminal Writ Petition No.340 of 2021 has taken a similar view and modified the condition to the extent of one surety instead of two.

6. The learned APP submits that though the Rules provide no specific requirement or guidelines or directions for furnishing two sureties by the convict while releasing him on Covid Emergency parole, however, the same is left at the discretion of the authority concerned. The learned APP appearing for the respondent-State fairly accepts 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, the said words "two sureties" are omitted 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 is a poverty stricken person. He is in jail for a long period. It is thus difficult either for him or his relatives

to make arrangement of two sureties. On earlier occasion, this court in the aforesaid two cases relied upon by the learned counsel appearing for the petitioner has relaxed the said condition and directed the petitioners 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 prisoner.

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

ORDER

- (i) The Writ Petition is hereby allowed.
- (ii) The impugned order is modified and the petitioner 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 petitioner.
- (iii) Rest of the conditions in the impugned order remain as it is.
- (iv) Rule made absolute in the above terms.
- (v) The Writ Petition is accordingly disposed of.

(S. G. DIGE, J.)

(V. K. JADHAV, J.)