

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

935 CRIMINAL WRIT PETITION NO. 1026 OF 2021

SAKHARAM UTTAM MALI, (C-8610)
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioner : Mr. Ram G. Nirmal (appointed)
APP for Respondents : Mr. K. S. Patil

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CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.
DATED : 06th OCTOBER, 2021

PER COURT:-

1. Heard.
2. Issue notice to the respondents. The learned APP waives notice for the respondents.
3. The petitioner is a life convict for the offence punishable under Section 302 of the Indian Penal Code and till today he has undergone three years, three months and fifteen days imprisonment.
4. In terms of the amended Rule 19(1)(C)(ii) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, the respondent

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.10,000/- (Rupees Ten Thousand only) in addition to the execution of personal bond.

5. Learned counsel appearing for the petitioner-convict submits that the petitioner is poverty stricken person and due to weak financial position he is unable to furnish two sureties as directed. Learned counsel for the petitioner submit that even though there is no provision and requirement in the Rules directing the petitioner-convict to furnish two sureties while granting Covid Emergency Parole, the Superintendent, Aurangabad Central Prison has directed the petitioner-convict to furnish two sureties. Learned counsel submits that the petitioner-convict may be granted Covid Emergency Parole by relaxing the stringent conditions imposed by the respondent-Superintendent, Aurangabad Central Prison, Aurangabad directing him to furnish two sureties. The petitioner-convict 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 may be modified to that extent.

6. The learned counsel for the petitioner-convict 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 headed by (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 sureties.

7. The learned APP appearing for the respondent State submits that though the rule provides 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 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 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".

8. It thus appears that the respondent-Superintendent, Aurangabad Central Prison, 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 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 petitioner-convict to furnish one surety which should be an independent surety, not relative to the prisoner.

9. 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 :-

O R D E R

- (i) Writ Petition is hereby allowed.
- (ii) The impugned order is modified and the petitioner-convict is directed to execute a Personal Bond of Rs.10,000/- (Rs. Ten Thousand) and one surety of Rs.10,000/- (Rs.Ten Thousand) which should be an independent surety, not relative to the prisoner.

- (iii) Rest of the conditions in the impugned order remain as it is.
- (iv) Writ Petition is accordingly disposed off.
- (v) We quantify the fees for the appointed counsel at Rs.2,000/- (Rupees Two thousand only) to be paid by the High Court Legal Services, Sub-Committee, Aurangabad.

(SHRIKANT D. KULKARNI, J.)

(V. K. JADHAV, J.)

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