

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 528 OF 2021

Aabidali Kadarali Shaikh
(In Nashik Central Jail)

...Petitioner

Versus

The State of Maharashtra

...Respondent

...

Mr. Advait M Sethna appointed advocate a/w. Mr. Raju Thakker Mr. Tanay Nandot, Mr. Pranav Gohil for Petitioner.

Mr. Deepak Thakre, PP a/w. Mr. S.R. Shinde, APP for Respondent-State.

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**CORAM : S. S. SHINDE &
MANISH PITALE, JJ.**

RESERVED ON: 29th APRIL, 2021.

PRONOUNCED ON: 4th MAY, 2021.

JUDGMENT [PER S.S. SHINDE, J.]:

. Rule. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the parties.

2. The petitioner has filed the present writ petition for the following substantial relief:

a) This Hon'ble Court be pleased to call for the records and proceedings and on perusal thereof, quash and or set aside the Impugned Rejection Letter/Letter of Understanding dated 19th September, 2020;

b) This Hon'ble Court be pleased to pass an Order directing the Superintendent of Nasik

Road Central Prison, Nasik to release the Petitioner herein on Covid-19 Emergency Parole Leave for 45 days on such terms and conditions as this Hon'ble Court may deem fit and proper in the present facts and circumstances and oblige;

3. The Petitioner (Convict No. C-11680), is convicted for the offences under Section 302 of IPC for life and fine of Rs. 5000/-, in Sessions Case No. 865 of 2014 on 13.04.2018 by the Sessions Court at Mumbai.

4. Learned counsel appearing for the Petitioner submits that the petitioner has undergone more than 6 years imprisonment and he is lodged in the Nashik Road Central prison. It is submitted that the application of the petitioner to release him on emergency (Covid-19) parole was rejected on the ground that the Petitioner herein was never released on parole/furlough, till date. Therefore, learned counsel appearing for the Petitioner submits that, merely because the Petitioner was never released earlier is no ground to reject his application for emergency (Covid-19) parole.

5. Learned PP appearing for Respondent-State submits that the prayer of the petitioner to release him on emergency (Covid-19) parole has rightly been turned down, relying upon the notification dated 8th May 2020 issued by the Government of Maharashtra,

Home Department. It is submitted that the requisite official capacity to accommodate the convicts in Nashik Central Prison is 3178 inmates. By end of March 2021, there were 2364 convicts (68-women convicts and 2243 men convicts). It is submitted that in the Nashik Central Prison 807 more convicts can be accommodated. In order to prevent spread of Covid-19 virus, inmates/convicts who have been recently lodged in the said prison are kept in isolation in separate hall and after necessary health checkup and tests, they are kept in the separate room in the prison. There is thermal scanning and rapid antigen tests are conducted on regular basis. In case, anybody is tested positive one separate isolation room No. 8 is maintained for their stay and treatment.

6. We have given careful consideration to the submissions of learned counsel appearing for the Petitioner and learned PP appearing for the Respondent-State. With the able assistance of learned counsel appearing for the Petitioner and learned PP, we have perused the pleadings and grounds in the petition, annexures thereto, impugned order/letter of understanding and also report received from the Superintendent of Nashik Central Prison, Nashik. Upon careful perusal of the said report received from the prison authority, it clearly appears on record that the proper care is being taken of the convicts in the prison, so as to, avoid possibility of

contracting Covid-19 virus. However, in the impugned order/letter of understanding a reason given is that, the Petitioner herein was never released on furlough/parole, in past.

7. In our opinion, merely because the petitioner was not released earlier cannot be a ground for rejecting the application of the petitioner for emergency parole. This Court in Criminal Writ Petition-ASDB-LD-VC No. 65 of 2020 (Milind Ashok Patil & Ors. Vs. State of Maharashtra & Ors.) had occasion to consider similar issue and a view is taken in the said case that merely because the petitioner was not released twice in the past on parole/furlough cannot be a ground for rejecting the application for emergency parole.

8. In that view of the matter, the writ petition is partly allowed. The impugned order dated 19.09.2020 passed by Respondent-authority, is quashed and set aside. The petitioner is granted liberty to apply afresh for grant of emergency Covid-19 parole within one week from today. Upon filing such an application, the respondent authority shall decide the same on its own merits, as expeditiously as possible, however, within two weeks from the date of filing of the application in accordance with the Prisons

(Bombay Furlough and Parole) Rules, 1959, and keeping in view the factors like the extent of spread of Covid-19 virus and conditions in jail.

9. Rule is partly made absolute to above extent. The writ petition stands disposed of accordingly.

10. We appreciate the able assistance rendered by Advocate Mr. Advait Sethna, appointed for representing the petitioner. We quantify his fees at Rs. 5000/- to be paid by High Court Legal Services Committee, Mumbai, within four weeks from the receipt of copy of this order.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)