

Mandira
Salgaonkar

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.435 OF 2021

Arif S/o Shehzad Qureshi	]	
R/o : Flat No.03, Shivai Society,	]	
Akash Petrol Pump, Sawarkar Garden,	]	
Dindori Road, MERI, Mhasrul,	]	
Nashik.	]	
(At present in Central Prison, Nashik	]	
Road, Nashik)	]	.. Petitioner

VERSUS

- | | | |
|--|---|-----------------------|
| 1. The State of Maharashtra |] | |
| Through its Principal Secretary, |] | |
| Home Department, Mantralaya, |] | |
| Mumbai -32 |] | |
| |] | |
| 2. The Divisional Commissioner, |] | |
| Nashik Division, Nashik, |] | |
| Office at Commissioner Office, Nashik |] | |
| Road, Nashik |] | |
| |] | |
| 3. The Deputy Inspector General of Police |] | |
| (Prison) |] | |
| Central Division, Central Prison, |] | |
| Harsul, Aurangabad |] | |
| |] | |
| 4. The Superintendent of Prison |] | |
| Central Prison, Nashik Road, Nashik |] | .. Respondents |

Mr.M.M.Chaudhari for the Petitioner.

Mr.V.B.Konde-Deshmukh, APP for the
Respondents/State.

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

**RESERVED ON : 25th FEBRUARY, 2021
PRONOUNCED ON : 08th MARCH, 2021**

JUDGMENT (PER MANISH PITALE, J.)

1. Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.
2. By this writ petition, the petitioner has challenged the order dated 4th January, 2021 passed by respondent No.4 whereby application for grant of emergency Covid-19 parole was rejected on the ground that he had not availed of furlough/parole leave even once earlier.
3. The petitioner is undergoing sentence of life imprisonment imposed upon him as per judgment and order dated 10th November, 2020 passed by the Sessions Court at Nashik for the offences punishable under Section 302 of the Indian Penal Code and the appeal preferred by him against the said judgment and order is pending.
4. In view of Covid-19 pandemic and the amendment in the Prisons (Bombay Furlough and Parole) Rules, 1959, the petitioner applied for grant of emergency Covid-19 parole. The application was rejected by the aforesaid impugned order mainly on the ground that the petitioner had not availed of furlough leave, even once in past and that there is no crowd in the jail and the authorities had sufficient infrastructure now to immediately take care of any inmate

or staff, who may suffers from Covid-19 virus.

5. Mr.Chaudhari, learned counsel appearing for the petitioner, submitted that the ground stated in the impugned order was unsustainable because the amendment brought in the Prisons (Bombay Furlough and Parole) Rules, 1959 was specifically intended to give relief of emergency Covid-19 parole to convicts like the petitioner and that non availing of facility of furlough leave or parole even once before, could not be a ground for rejecting the application of the petitioner. It was submitted that the application of the petitioner was not considered properly on merits at all by respondent No.4.

6. On the other hand, Mr.Konde-Deshmukh, learned APP appeared on behalf of the respondent/State and opposed the grant of emergency Covid-19 parole. It was submitted that now the situation in the Nashik Road Central Prison, Nashik had changed substantially. It was submitted that the number of inmates in the said prison are less than the capacity. It was submitted that there is no crowd in the jail and that the authorities had sufficient infrastructure now to immediately take care of any inmate or staff, who may suffers from Covid-19 virus. On this basis, it was submitted that the petitioner could be permitted to apply afresh for grant of emergency Covid-19 parole.

7. The ground raised on behalf of the petitioner to challenge the impugned order appears to be justified because this Court has already taken a view in case of ***Kalyan s/o Bansidharrao Renge Vs. The State of Maharashtra & Anr.*** (Criminal Writ Petition No.ASDB-LD-

VC 265 OF 2020) and *Uzair @ Hujer S/o Rafiq Shaikh Vs. The State of Maharashtra & Ors. (Criminal Writ Petition No.2989 of 2020)* that non availing of parole or furlough leave, even once earlier, cannot be a ground to reject the application for grant of emergency Covid-19 parole. To that extent, the case of the petitioner is clearly covered in his favour.

8. But, at the same time, the fact situation on ground as on today, cannot be ignored and, therefore, there is substance in the contention raised on behalf of the learned APP. The impugned order itself records that now the situation at the Nashik Road Central Prison has changed substantially. The number of inmates in the jail are less than the capacity of the jail, indicating that there is no over crowding as of now. It is also reported that the inmates presently are not infected by Covid-19 virus and that the regular rapid antigen tests are being undertaken. In that view of the matter, we are of the opinion that the ground situation in the light of the said report cannot be ignored and that there is substance in the contention raised by the learned APP that the request of the petitioner for grant of emergency Covid-19 parole can be considered afresh.

9. In view of the above, the writ petition is partly allowed. The impugned order is quashed and set aside. The petitioner is granted liberty to apply afresh for grant of emergency Covid-19 parole. In case, such an application is submitted by the petitioner, respondent No.4 shall dispose of the same, within two weeks of submission of such application, in the light of the circumstances prevailing as on today and in terms of the Prisons (Bombay Furlough and Parole) Rules, 1959.

10. The writ petition is disposed of in the above terms. Rule is discharged accordingly.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)