

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.279 OF 2021

Charansingh s/o Harinamsingh]
Thakur (Bundeale,]
Confined at Central Jail, Nassik road as]
Covinct No.11782]
Age : 55 years, Occu : Business,]
R/o Dampuri, Lohgaon, Parbhani]..... Petitioner.

Versus

State of Maharashtra]
Through Superintendent]
Central Prison, Nasik road.].....Respondent.

Mr. Rupesh Jaiswal for the Petitioner.
Mrs. A S Pai, APP for the Respondent/State.

CORAM : S. S. SHINDE,
MANISH PITALE, JJ
Reserved on : 11th FEBRUARY 2021
Pronounced on: 23rd FEBRUARY 2021

JUDGMENT : (PER S S SHINDE, J)

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

2 By this Writ Petition the Petitioner seeks the following substantial
reliefs :-

“(B) By Writ of Mandamus or any other appropriate writ,
order or directions in the like nature to quash and set
aside the order of Respondent dated 12.01.2021 and
further direct the respondent to release the Petitioner’s

brother (Bhansingh s/o Harinamsingh Bunde, Confined at Central Jail Nasik road as Convict No.11782 Yerwada Central Jail) on Emergency Parole Leave.

3 The present Writ Petition is filed by the brother of accused, who has been convicted by the learned Sessions Judge, Parbhani for the offence punishable under Section 376(2)(g) of the Indian Penal Code and sentenced to 10 years imprisonment. The brother of the Petitioner is presently confined in Central Jail Nasik Road. By this Petition the Petitioner is seeking directions to the Respondent to release his brother on emergency parole leave.

4 The learned counsel for the Petitioner submits that on 22/09/2020 the brother of the Petitioner filed application for emergency parole leave on the ground of outbreak of Covid 19 pandemic, however, the Respondent jail authority by order dated 29/09/2020 rejected the said application on the ground that the Petitioner's brother was never released on furlough and parole. The said order has been challenged by the convict in Criminal Writ Petition Stamp No.5076 of 2020, and this Court by its order dated 07/01/2021 quashed and set aside the said order, and directed the Respondent-Jail Authority to consider the application of the convict afresh. Pursuant to the directions given by this Court by order dated 07/01/2021, the respondent jail authority considered the application of the convict afresh and rejected the application by its order dated 12.01.2021. The said order dated 12/01/2021 of

the Respondent-Authorities is impugned in this Writ Petition. It is submitted that the prayer of the Petitioner's brother for releasing him on emergency parole leave on the grounds mentioned in the impugned order cannot be rejected by Respondent as three co-accused were already released on Covid-19 Parole Leave by the order of this Court. It is also submitted that the convict is in jail since 4 years and 2 months including remission. The learned counsel appearing for the Petitioner therefore submits that the present Petition deserves to be allowed.

5 On the other hand Mrs. Aruna S Pai, the learned APP appearing for the Respondent/State vehemently opposed the prayer of the Petitioner. She submitted that Respondent jail authority has rightly rejected the earlier application of the Petitioner's brother for emergency parole on the ground that he is never released on furlough and parole. She further submits that in view of the directions given by this Court by its order dated 07/01/2021, the Respondent Jail Authority considered the application of the convict afresh and by the impugned order dated 12.1.2021 rightly rejected the same. She further submitted that now the situation in Central Jail Nashik Road has changed substantially and the number of inmates in the said prison are less than the capacity. It is further submitted that there is no crowd in the said jail and that the jail authorities have sufficient infrastructure now to immediately take care of any inmate or staff, who may suffer from Covind-19 Virus. She, therefore,

submitted that the present Petition may be dismissed.

6 We have given our due consideration to the rival submissions of the learned counsel appearing for the parties. With their able assistance we have perused the pleadings, grounds taken in the Petition and annexures thereto.

7 It is an undisputed fact that the convict i.e. the Petitioner's brother is an accused in Sessions Case No.121 of 1994 and the learned Ad-hoc Sessions Judge, Parbhani convicted the Petitioner's brother for the offence punishable under Section 376(2)(g) of the Indian Penal Code and sentenced him to suffer imprisonment for 10 years. The Petitioner is undergoing his sentence in Nasik Road Central Prison.

8 The Authorities have considered the application of the convict, and on the ground that the Central Jail Nashik has sufficient infrastructure to take care of inmate/staff who may suffer from Covide-19 virus and, the Petitioner's brother i.e. Convict No.C-11782 Bhanusingh Harnamsingh Budele has been convicted for the offences punishable under Section 376(2)(g), 366 of the Indian Penal Code and in view of the provision of Rule 4(12) and 4(13) of the Prisons (Bombay Furlough and Parole) Rules, 1959, he is not eligible/entitled for parole/furlough.

9 Rule 4(12) and 4(13) which forms the basis of rejection of the application filed by the brother of the Petitioner reads thus :-

“4 Eligibility for furlough :-

All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough :-

(1) to (11)

(12) Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak, riot, mutiny or escape, or who have been found to be instigating the serious violation of prison discipline, smuggling or narcotic and psychotropic substances including convicted under Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), rape or rape with murder, attempt to rape with murder and foreigner prisoners (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section)

(13) Who is sentenced for offences such as terrorist crimes, mutiny against state, kidnapping for ransom (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section)

(14) to (21)

9 It has been brought to our notice by the learned APP appearing for the Respondent/State that in pursuance of release of number of inmates due to Covid-19 pandemic, now the situation in Nashik Road Central Prison has changed substantially. Considering the fact situation as on today, we find substance in the contention raised by the learned APP appearing for the Respondent/State. By order dated 07/01/2021 this Court while disposing of the Criminal Writ Petition No.5076 of 2020 filed by the convict i.e. the brother of the Petitioner, direction was given to the authorities to consider the application of the convict afresh on its own merits. As stated herein above, thereafter, the Respondent- Authority by the impugned order dated 12.01.2021 again rejected the application of the convict for the reasons which have been stated herein above. We are of the considered view that the reasons recorded by the Respondent-Authority while rejecting application of the brother of the Petitioner are legally sustainable.

10 In view of the aforesaid Rules 4(12) and 4(13) of the Prisons (Bombay Furlough and Parole) Rules, 1959 and in view of the aforesaid reasons, the Petitioner's brother is not eligible/entitled for the release on emergency Covid-19 Parole since he has not undergone the sentence awarded under Section 376 (2)(g) of the Indian Penal Code and now the fact situation has been changed substantially. The reasons recorded by the Respondent Jail

Authority in the impugned order while rejecting the application of the Petitioner's brother needs no interference. There is no merit in the Petition. Accordingly the Petition stands rejected. Accordingly Rule stands discharged.

[MANISH PITALE, J]

[S. S. SHINDE , J]