

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

CRIMINAL WRIT PETITION NO. 448 OF 2021

Devram Dagadu Shelke
Age- 71 years, Occ: Nil
R/o. At Presently lodged in
Yerwada Open District Prison
District: Pune.

...PETITIONER

Versus

1. The State of Maharashtra
2. The Superintendent of Jail
Yerwada Open District Prison

...RESPONDENTS

...

Mr. Aniket Vagal for the Petitioner.
Mrs. S.D. Shinde, APP for State.

...

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

**RESERVED ON : 8th APRIL, 2021.
PRONOUNCED ON: 20th APRIL, 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 petition for the following substantial reliefs:

- a) Order of Respondent No. 2 passed on 05.01.2021, may kindly be quashed and set aside.

b) The Petitioner may kindly be released on Emergency Parole for the Period of 45 days on any terms and condition as this Hon'ble Court may deem fit and proper.

3. At the outset it is required to be noted that the Petitioner is lodged in Yerwada Open Prison, at Pune, however, the Petitioner in the title clause in the array of the respondents by mistake added Superintendent of Nashik Road Central Prison, Nashik as a party respondent. Leave to amend is granted. Amendment to be carried out forthwith.

4. The Petitioner herein (Convict No. C-863), is convicted for the offence under Section 302 read with 34 of IPC for life and also for offence under Section 25 (A) and 27 of Arms Act, in Sessions Case No. 72 of 1988, on 18.05.2015 by the Bombay High Court.

5. Learned counsel appearing for the Petitioner submits that the petitioner has undergone more than 8 years imprisonment and he is lodged in the open 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 not released earlier is no ground to reject his application for emergency (Covid-19) parole.

6. Learned APP 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 inmates are less in number as compared to the total capacity of the prison. Utmost care is being taken in the prison by the officers and employees working in the prison, by examining the convicts by thermal scanning and RT-PCR tests. At present there are no convicts who are tested positive/Covid-19 affected in the prison. Therefore, learned APP submits that the prayer of the petitioner to release him on emergency (Covid-19) parole cannot be favorably considered.

7. We have given careful consideration to the submissions of learned counsel appearing for the Petitioner and learned APP appearing for the Respondent-State. With the able assistance of learned counsel appearing for the Petitioner and learned APP, we have perused pleadings and grounds in the petition, annexures thereto, impugned order/letter of understanding and also report received from the Superintendent of Yerwada Open Prison, Class-I, Pune-6. Upon careful perusal of the said report received from the prison authority, it appears 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 not released on furlough or parole, till date. The another reason is given is that inmate who is convicted for the economical offences and under Special Act is not eligible for emergency (Covid-19) parole.

8. 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.

9. In that view of the matter, the writ petition is partly allowed. The impugned order dated 05.01.2021 passed by Respondent No. 2, 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 three 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.

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

(MANISH PITALE, J.)

(S. S. SHINDE, J.)