

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

CRIMINAL WRIT PETITION NO. 492 OF 2021

Manoj Singh S/o Sikandarsingh Taak
Age: 50 years, C-12233, Occ Labour,
R/o: at present in Nashik Jail, Nashik.

...PETITIONER

Versus

1. The State of Maharashtra
2. The Superintendent of Jail,
Nashik Jail, Nashik.

...RESPONDENTS

...

Mr. Suraj Gothwal a/w. Adv. Rupali Gothwal, Adv. Dalpreet Singh Kohli,
Mr. Subham Gavali, Mr. Jishnu N.B. for Petitioner.

Mr. J P Yagnik, APP for State.

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

DATE : 23rd FEBRUARY, 2021.

P.C.:

1. By this petition the petitioner has challenged the order dated 19.09.2018 passed by Respondent No. 2- Superintendent of Nashik Jail, Nashik, whereby an application submitted by petitioner for grant of emergency Covid-19 parole was rejected, only on the ground that the petitioner had not availed furlough/parole leave even on once earlier.

2. Learned counsel for the petitioner vehemently submitted that only ground stated in the impugned order is wholly unsustainable because as per the amendment in the Prisons (Bombay Furlough and Parole) Rules 1959, an application for grant of emergency Covid-19 parole ought to have been considered on merits and could not have rejected on the only aforesaid sole ground.

3. Mr. J P Yagnik, learned APP appearing for Respondents-State fairly submitted that only ground stated in the impugned order is not unsustainable. But, at the same time learned APP submits that in view of change in circumstances, particularly the fact that now the number of inmates in the Nashik Jail is less than the capacity and there is no overcrowding, the prayer for grant of emergency Covid-19 parole needs to be considered afresh. It is further pointed out that Rapid Antigen Tests are being undertaken on regular basis and that at present none of the inmates is affected by the Covid-19 virus.

4. Having heard learned counsel appearing for the rival parties, we are of the opinion that the learned counsel for the petitioner is justified in contending that only ground stated in the impugned order is unsustainable. This Court has already observed in Kalyan s/o. Bansidharrao Renge Vs. The

State of Maharashtra & another (Criminal Writ Petition No. ASDB-LDVC-265 of 2020) and Uzair @ Hujer s/o. Rafiq Shaikh vs. The State of Maharashtra & Others (Criminal Writ Petition No. 2989 of 2020), that such ground cannot be taken for rejecting the application for grant of emergency Covid-19 parole. To that extent the petition deserves to succeed.

5. But, at the same time the ground reality cannot be ignored and in view of change in circumstances pointed out by learned APP, we are of the opinion that the writ petition deserves to be partly allowed by giving opportunity to the petitioner for consideration of his prayer afresh.

6. In that view of above, the writ petition is allowed. The impugned order is quashed and set aside. The Petitioner is granted liberty to move a fresh application for grant of emergency Covid-19 parole, within two weeks from today. If such an application is moved by the Petitioner within stipulated period, the Respondent No. 2 shall decide the same within two weeks from receipt of such application.

7. The writ petition stands disposed of on above terms.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)