

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.961 OF 2021

Rajesh S/o Madhukar Patil

..Petitioner

Versus

State of Maharashtra

..Respondent

Mr. Rupesh A. Jaiswal i/by Mr. M. H. Chandanshiv, for the Petitioner.
Mr. S. R. Shinde, APP for the Respondent - State.

CORAM : S. S. SHINDE &
MANISH PITALE, JJ.
DATE : 15th MARCH, 2021

P.C.

1. This Writ Petition is filed with following substantial prayer clause :-

“(B) By Writ of Mandamus or any other appropriate writ, or directions in the like nature to quash and set aside the order of Respondent dated 19.09.2020 (Exhibit-A) and further direct the respondent to release the Petitioner’s father (Madhukar S/o Ramchandra Patil Convict no.11745, Nasik Road Central Jail) on Emergency Parole Leave.”

2. Learned counsel appearing for the petitioner submits that the application of the petitioner’s father for grant of furlough/parole has been rejected only on the ground that the petitioner’s father was not released earlier on furlough/parole twice. Learned counsel for the petitioner submits that petitioner’s father has undergone eight years and two months sentence but earlier he was released once on furlough leave and did surrender within

time to the Jail Authorities.

3. Learned counsel in support of his contention that the reason assigned in the impugned order cannot legally sustain, placed reliance on the unreported judgment of this Court in **Ashokkumar Dashrat Salam Vs. The State of Maharashtra (Writ Petition No.284 of 2021 and connected matters)** and in particular paragraph 3 of the said judgment.

4. On the other hand, learned APP appearing for the State relied upon report received from the Superintendent, Nashik Road Central Prison and submits that apart from the reasons assigned in the impugned order, now, all the prosecutions are being taken in the jail so as to avoid the spread of Covid-19 virus. Learned APP has tendered across the bar a copy of the letter received from the Superintendent of Nashik Road Central Prison addressed to the Public Prosecutor. The same is taken on record.

5. We have considered the rival submissions, with the able assistance of the learned counsel appearing for the petitioner and learned APP appearing for the respondent – State as also carefully perused the grounds taken in the Petition and the reasons assigned in the impugned order by the Jail Authorities. The issue raised in the present petition is no longer *res-integra* and has been answered by the pronouncement of the Division Bench in the case of **Ashokkumar Dashrat Salam (supra)**. In paragraphs 3 and 7, it is observed thus :-

“3. In terms of the notification dated 8.5.2020 issued by the State Government on the backdrop of outbreak of

COVID-19 pandemic situation, the petitioners herein have filed leave applications for emergency parole to the respondent authorities, however, the respondent authorities rejected the leave applications by impugned order solely on the ground that in terms of the said notification the petitioners ought to have availed either furlough or parole leave in the past and that the petitioners ought to have returned to jail in time on such last two occasions. It is further observed by the respondent authorities that all the petitioners are presently in the open jail at Paithan and the present there are less number of inmates compares to the capacity of 500 inmates in the open jail.

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7. We agree with the view expressed on earlier occasion by the Division Bench that said condition is prescribed to ensure the timely return of the prisoner, who has been granted emergency parole leave on account of outbreak of Covid-19. It would be ridiculous to read the said condition as condition barring the prisoner to apply for emergency parole leave for the reason that on earlier occasion they were not released on parole or furlough leave. Apart from this, we agree with the submissions made by learned counsel for the petitioners that the respondent authorities cannot make discrimination as against the petitioners for the reason that the petitioners can very well stay in open jail safely by maintaining social distance, as at present less number of inmates are there in the open jail since others have been

granted emergency parole leave by giving benefit of the aforesaid notification.”

6. In the said judgment, reliance has been placed in the case of Kavita W/o Dilip Baviskar Vs. State of Maharashtra (Writ Petition No.571 of 2020).

7. In that view of the matter, the impugned order is quashed and set aside. The Petition is partly allowed. Petitioner is granted liberty to file the application. In case application is filed by the petitioner, the Respondent is directed to decide the application afresh as expeditiously as possible, however, within two weeks from filing such application.

8. The petition stands disposed off accordingly.

Balaji G.
Panchal

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Date: 2021.03.16
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[MANISH PITALE, J]

[S. S. SHINDE, J]