

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

CRIMINAL WRIT PETITION NO.1164 OF 2021

Lalchand Balaram Mhatre

...PETITIONER

Versus

The State of Maharashtra

...RESPONDENT

Mr.Rupesh A. Jaiswal for the Petitioner

Mr.J.P. Yagnik, APP, for State

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

JUDGEMENT RESERVED ON : APRIL 8, 2021.

JUDGEMENT PRONOUNCED ON: APRIL 20, 2021.

JUDGMENT [PER S. S. SHINDE, J.]:

Rule. Rule made returnable forthwith and heard with the consent of the counsel appearing for the parties.

2. The Petitioner has filed the present petition for the following substantial reliefs:

A) Present Criminal Writ petition may kindly be allowed;

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 05.06.2020 (Exhibit-A) and further direct the respondent to release the Petitioner's brother in law (Ranshul S/o Chandrakant Patil Convict no.11743, Nasik Road Central Jail) on Emergency Parole Leave."

3. The Petitioner herein (Convict No.C-11743), is convicted for the offence punishable under section 302 and 149 of Indian Penal Code for life imprisonment and fine of Rs.10,000/-, in Sessions Case No.24 of 2013 on 7.3.2018 by the Sessions Court at Kalyan.

4. Learned counsel appearing for the Petitioner submits that the petitioner has undergone more than 8 years of imprisonment and he is lodged in the Nashik Road Central prison, Jail road, Nashik. 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 was released only once on parole/furlough, till date. Therefore, the learned counsel appearing for the Petitioner submits that merely because the Petitioner was released earlier once, is no ground to reject his application for emergency (Covid-19) parole.

5. 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 in the prison are less in number as compared to the 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.

6. 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 Nashik Road Central prison, Jail Road, Nashik. Upon careful perusal of the said report received from the prison authority, it appears that 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, the reason given is that the Petitioner herein was released on furlough or parole only once, till date.

7. In our opinion, merely because the petitioner was released earlier only once, 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 an occasion to consider a similar issue and a view is taken in the said case that merely because the petitioner was released once and not twice in the past on parole/furlough, cannot be a ground for rejecting the application for emergency parole.

8. In that view of the matter, the writ petition is partly allowed. The impugned order dated 5.6.2020 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.

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

(MANISH PITALE, J.)

(S. S. SHINDE, J.)