

Vishwanath
S. Sherla

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

CRIMINAL WRIT PETITION NO.1159 OF 2021

Mustafa Yunus Khan

... Petitioner

Vs.

State of Maharashtra

... Respondent

Mr.Bharat K. Manghani for the Petitioner

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

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

DATED: MARCH 11, 2021

ORAL JUDGMENT (PER S.S. SHINDE, J.):

1. Rule. Rule made returnable forthwith with the consent of the learned Counsel appearing for the parties and heard finally.
2. This Petition takes exception to the order passed by the Superintendent of Prison, Nashik Road Central Prison, Nashik, dated 19th September, 2020 thereby rejecting the Application of the petitioner for Covid Parole.
3. The learned Counsel appearing for the petitioner submits that the petitioner is inside the jail for 11 years and he was never

released on parole or furlough. The only reason assigned in the impugned order is that the petitioner was never released on furlough or parole. The learned Counsel submits that the petitioner never applied for furlough or parole and, therefore, the question of his release in the past does not arise.

4. Learned APP appearing for the Respondent – State and its officials submits that one of the offences wherein the petitioner is convicted is section 392 of the Indian Penal Code and the convicts of such offences are not entitled to be released on parole/furlough or Covid Parole.

5. We have given our careful consideration to the rival submissions. With the assistance of the learned Counsel appearing for the petitioner and the learned APP appearing for the State, carefully perused the pleadings in the petition and the grounds taken therein, the annexures thereto, the impugned order and the report submitted by the concerned jail authority. The only reason assigned in the impugned order is that the petitioner was never released in the past on furlough or parole and on that ground alone, the impugned order is passed.

6. In our considered view and in view of the judgments of this Court 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)**, the reason assigned in the impugned order cannot be legally sustained.

7. In that view of the matter, the impugned order dated 19th September, 2020 passed by the Superintendent, Nashik Road Central Prison, Nashik, is quashed and set aside. The petitioner is given liberty to file a fresh application. In case, such an application is filed by the petitioner, we direct Respondent No.1 to decide the same afresh on merits, without assigning the same reason as mentioned in the impugned order, within a period of two weeks from the date of filing such application.

8. With the above observations, Rule made partly absolute and the petition is disposed of accordingly.

9. All concerned to act on an authenticated copy of this order.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)