

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

CRIMINAL WRIT PETITION NO. 1718 OF 2021

Dattatray Ramchandra Tambade
Age- 52 years, Occ: Nil
R/o. Yerwada Open District
Central Prison Pune at Pune.
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.
Mr. K.V. Saste, APP for State.

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

**RESERVED ON : 20th APRIL, 2021.
PRONOUNCED ON: 22nd 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 15.01.2021, 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. The Petitioner herein (Convict No.C-855), is convicted for the offence punishable under section 302 read with 34 of Indian Penal Code for life imprisonment and fine of Rs.5,000/-, in Sessions Case No.830 of 2012 on 29.03.2017 by the Sessions Court at Pune.

4. Learned counsel appearing for the Petitioner submits that the petitioner has undergone more than 8 years imprisonment and he is lodged in the Yerwada 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 released only on one occasion on parole/furlough, in past. Therefore, learned counsel appearing for the Petitioner submits that, merely because the Petitioner was released only once earlier 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 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 the 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 clearly appears on record 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 released only once on furlough/parole, in past.

7. In our opinion, merely because the petitioner was released only once earlier cannot be a ground for rejecting the application of the petitioner for emergency parole. This issue has been dealt with by the Bombay High Court, bench at Aurangabad, in the case of Kavita w/o Dilip Baviskar v/s. The State of Maharashtra (Coram: T.V. Nalawade & Shrikant D Kulkarni, JJ), wherein a view is taken that whether the convict was released on one occasion or twice on parole in past and reported back in time, had been introduced with an intention to see that the convict shall return to jail in case he is released on emergency parole. It is further held in the said case that through the petitioner therein had released only once on parole in the past, he was entitled to be released on emergency parole.

8. In that view of the matter, the writ petition is partly allowed. The impugned order dated 15.01.2021 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.

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

(MANISH PITALE, J.)

(S. S. SHINDE, J.)