

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

CRIMINAL WRIT PETITION NO. 1717 OF 2021

Rakesh Mukhnath Sharma
Age- 45 years, Occ: Nil
R/o. Bhagyashri Society, 6/7,
Near Shivprabha Building,
Savarkar Nagar, Ghatkopar
Andheri Link Road, Sakinaka,
Mumbai- 400 072.
At Presently lodged in Nashik Road,
Central Prison, Nashik.

...PETITIONER

Versus

1. The State of Maharashtra
2. The Superintendent of Jail
Nashik Road, Central Prison.

...RESPONDENTS

...

Mr. Aniket Vagal for the Petitioner.
Mr. Deepak Thakre, PP a/w. Mr. J P Yagnik, APP for State.

...

**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 05.01.2021, 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-12573), is convicted for the offences under Section 302, 149, 307, 149, 324, 449, 144, 148, 506 and 49 of IPC and Section 3 and 25 of Arms Act, for life and fine of Rs. 10000/-, in Sessions Case No. 650 of 2012 on 24.07.2020 by the Sessions Court at Mumbai.

4. Learned counsel appearing for the Petitioner submits that the petitioner has undergone more than 8 years imprisonment and he is lodged in the Nashik Road Central 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 never released on parole/furlough, till date. Therefore, learned counsel appearing for the Petitioner submits that, merely because the Petitioner was never released 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 requisite official capacity to accommodate the convicts in

Nashik Central Prison is 3178 inmates. By end of March 2021, there were 2364 convicts (68- women convicts and 2243 men convicts). It is submitted that in the Nashik Central Prison 807 more convicts can be accommodated. In order to prevent spread of Covid-19 virus, inmates/convicts who have been recently lodged in the said prison are kept in isolation in separate hall and after necessary health checkup and tests, they are kept in the separate room in the prison. There is thermal scanning and rapid antigen tests are conducted on regular basis. In case, anybody is tested positive one separate isolation room No. 8 is maintained for their stay and treatment.

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 Nashik Central Prison, Nashik. 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 never released on furlough/parole, in past.

7. In our opinion, merely because the petitioner was not released earlier 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 occasion to consider similar issue and a view is taken in the said case that merely because the petitioner was not released 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 05.01.2021 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.)