

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1838 OF 2021

Shailesh S/o Ramesh Jaiswal)
Age: 41 years, Occ: Prisoner)
Convict No.C-12346)
At present lodged in)
Central Prison, Nashik road Nashik,)
R/o: 204, B/3, Siddhivinayak Park,)
Network Nagar, Road No.01,)
Jogeshwari (East), Mumbai-6.) Petitioner.

V/s

1] The State of Maharashtra)
Through its Principal Secretary,)
Home Department,)
Mantralaya, Mumbai-32)
2] The Divisional Commissioner)
Nashik Division, Nashik,)
Office at Commissioner Office, Nashik road)
Nashik.)
3] The Deputy Inspector General)
of Police (Prison), Central Division,)
Central Prison, Harsul, Aurangabad.)
4] The Superintendent of Prison)
Central Prison, Nashik Road, Nashik.)
5] Shri Pramod B. Wagh)
Superintendent of Prison,)
Central Prison, Nashik Road, Nashik.)Respondents

Mr. M.M. Chaudhari, for the Petitioner.
Mr. J.P. Yagnik, APP for the Respondent-State.

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

**Judgment reserved on 4/5/2021
Judgment pronounced on 6/5/2021**

JUDGMENT: (Per Manish Pitale, J.)

1] By this Writ Petition, the Petitioner has challenged the order dated 30/3/2021 passed by Respondent No.4 – Superintendent of Prison, Central Prison, Nashik Road, Nashik, whereby application of the Petitioner for release on emergency covid-19 parole has been rejected.

2] Mr. Chaudhari, the learned Counsel for the Petitioner submitted that this is the second round of litigation on the same aspect before this Court. It was pointed out that by earlier order dated 8/3/2021, this Court had partly allowed Criminal Writ Petition No.445 of 2021 and an order rejecting application for grant of emergency covid-19 parole was set aside and the Petitioner was granted an opportunity to apply afresh with a direction to the Respondents to dispose of such fresh application within two weeks.

3] It was submitted that a perusal of the impugned order dated 30/3/2021, would show that the subsequent application of the Petitioner has also been rejected for similar reasons and that therefore, the Writ Petition deserves to be allowed.

4] On the other hand, Mr. Yagnik, the learned APP appearing for the State submitted that the Petitioner had been convicted under Section 376(2) of the Indian Penal Code and that in view of specific prohibition under the provisions of the Prisons (Bombay Furlough and Parole) Rules, 1959, prayer made on behalf of the Petitioner did not deserve to be granted. It was submitted that a perusal of the impugned order would show that this was one of the specific reasons stated in the order and that therefore, there was no substance in the contentions raised on behalf of the Petitioner.

5] We have perused the impugned order. The reasons stated in the said order are two-fold, firstly that there was possibility of the Petitioner absconding upon being released on parole leave and secondly that under Rule 19(1) of the aforesaid Rules, the Petitioner

was ineligible for grant of parole leave.

6] There is no dispute about the fact that the Petitioner has been convicted under Section 376(2) of the Indian Penal Code and sentenced for a period of 10 years. There is also no dispute about the fact that the Petitioner has undergone imprisonment only for a period of 2 years and 19 days as on 03/05/2021, as per the report submitted by the Respondent No.4 – Superintendent of Prison, Central Prison, Nashik Road, Nashik. These two reasons are sufficient to reject the present Writ Petition because under the relevant Rules, since the Petitioner stands convicted under Section 376(2) of the Indian Penal Code, he is not eligible for being released on parole leave and secondly, he has not even undergone three years of imprisonment. We are not in agreement with the leaned Counsel for the Petitioner that emergency covid-19 parole stands on completely different footing and in view of amendment brought in the aforesaid Rules in the backdrop of the covid-19 pandemic, the application of the Petitioner ought to have been considered favourably.

7] We are of the opinion that no fault can be found with the

impugned order passed by Respondent No. 4 - Superintendent of Prison, Central Prison, Nashik Road, Nashik.

8] Accordingly, Writ Petition is dismissed.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)

Corrected as per order dated 14th July, 2021.