

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

CRIMINAL WRIT PETITION NO.1800 OF 2021

Rahul Shrihari Chaudhari
age – 25 years, Occ.: NIL
r/o.: Lane No.6, Laxminagar
Zopadpatti, Dahanukar Colony
Kothrud, Pune
at presently lodged in
Yerwada Open District Central Prison, Pune

... Petitioner

Vs.

1) State of Maharashtra
2) Asst. Commissioner of Police
Sinhgad Road Division, Pune
3) Dy. Inspector General of Prisons
4) Addl. Director General of Police and
Inspector General of Police, Prison and
Reformation, Pune

... Respondents

Mr.Aniket Vagal for the Petitioner

Mr.Deepak Thakare, Public Prosecutor with Mr.J.P. Yagnik, APP,
for Respondent – State

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

**JUDGMENT RESERVED ON: MAY 6, 2021
JUDGMENT DELIVERED ON: JUNE 8, 2021**

JUDGEMENT (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 dated 24th June, 2020 passed by Respondent No.4 – Additional Director General of Police, Pune, rejecting the application of the petitioner for parole.

3. The petitioner was arrested by Kothrud police station vide C.R. No.414 of 2010 on 28.12.2010 for the offence punishable under section 302, 143, 147, 148, 149 of Indian Penal Code and under sections 4, 25 of the Arms Act. The Petitioner was convicted by Sessions Court, Pune on 31.1.2017 and sentenced to suffer R.I. for life and to pay a fine of Rs.5,000/-. On 28.7.2019, the petitioner filed an application for parole leave, which was rejected on 15.1.2019. Thereafter, the petitioner preferred an appeal before Respondent No.4 but the same was dismissed on 24.6.2020 and hence, this Petition.

4. Learned Counsel appearing for the petitioner submitted that the application filed by the petitioner to release him on parole leave has been rejected mainly on the ground that if the petitioner is released, there is a threat / danger to the life of the prosecution witnesses and relatives of the deceased. It is submitted that the said observations made in the impugned order are not supported

by any material. The petitioner is in custody since 2010 and there is no any untoward incident in the jail or elsewhere at the instance of the petitioner. The petitioner's real brother is willing to stand surety, for the release of the petitioner.

5. Pursuant to the notices issued to the respondents, the Superintendent, Yerwada Central Prison, Pune, sent a report to this Court through the learned Public Prosecutor. It appears from the said report that the surety, whose name was submitted by the petitioner to the jail authority, was not competent and eligible to stand as surety as per relevant rules and procedure. Again, a report was called from the Assistant Commissioner of Police, Sinhagad road Division, Pune. The said report is adverse to the petitioner. It is stated in the said report that in case, the petitioner is released on parole, the petitioner is likely to indulge into similar criminal activities and there is a threat to the relatives of the deceased and also to the other prosecution witnesses. It is also mentioned in the said report that in view of the Government Notification dated 16.4.2018, as provided in sub-rule (6) of Rule 6 of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, the convict who is desirous of availing parole leave, shall

furnish eligible and competent surety. In absence of furnishing the name of such surety, who is competent and eligible, the prayer for parole cannot be acceded to. It appears from the report that in case, the petitioner is released on parole, there may be threat to the life of the witnesses and also to the relatives of the deceased. It is also mentioned in the impugned order that the residence of the relatives of the deceased and the present petitioner are in the same vicinity and, therefore, there would be danger to the life of the relatives of the deceased if the petitioner is released on parole.

6. The report submitted by the Assistant Commissioner of Police, Sinhagad Road Division, Pune, is based upon fact finding enquiry and, therefore, it is not desirable to interfere with the said fact finding report while exercising the writ jurisdiction. The apprehension expressed by the respondent – authority is well founded on the basis of the enquiry report submitted by the Assistant Commissioner of Police, Sinhagad region, Pune.

7. In that view of the matter, we are unable to persuade ourselves to entertain the prayer of the petitioner to release him on parole. Hence, the petition stands rejected. However, we make it clear that rejection of this petition shall not be construed as an

impediment to the petitioner to apply afresh for parole or furlough, as the case may be, keeping in view the relevant rules and time gap of six months between the date of rejection of the application for parole and the date on which fresh application will be made. We make it clear that the observations made hereinabove are restricted *qua* the enquiry made by the Assistant Commissioner of Police, Sinhagad Division, Pune and limited to the present proceedings and would not come in the way of the petitioner in future.

8. Rule stands discharged accordingly.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)