

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

CRIMINAL WRIT PETITION NO.1839 OF 2021

Kamal Mayaram Kanojiya

Age 45 years,

Occ.: Nil

r/o. At present C/342, Circle No.2/13

Taloja Central Prison, Navi Mumbai

Maharashtra

... Petitioner

Vs.

1) State of Maharashtra

2) The Superintendent of Jail

Taloja Central Prison

... Respondents

Mr.Aniket Vagal for the Petitioner

Mr.Deepak Thakare, Public Prosecutor with Mr.S.R. Shinde, APP,
for Respondent – State

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

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

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

1. Rule. Rule made returnable forthwith and heard with the consent of the 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 18.3.2021, 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 conditions as this Hon'ble Court may deem fit and proper."

3. The Petitioner herein (Convict No.C-342), is convicted for the offence punishable under section 302 read with section 34 as also sections 392 and 394 of Indian Penal Code for life imprisonment and fine in Sessions Case No.6 of 2007 on 25.11.2008 by the Sessions Court at Mumbai.

4. Learned Counsel appearing for the Petitioner submits that the petitioner has undergone more than 16 years of imprisonment and he is lodged in Talaja Central prison, Navi Mumbai. It is submitted that the application of the petitioner to release him on emergency (Covid-19) parole was rejected by Superintendent of Jail, Talaja Central Prison, Navi Mumbai on 30th May, 2020, on the ground that the petitioner was never released on parole/furlough. Therefore, the petitioner challenged the said order by filing Criminal Writ Petition No.193 of 2021 which was partly allowed and the petitioner was directed to apply afresh to the

Superintendent of Jail, Talaja Central Prison, Navi Mumbai. Accordingly, the petitioner applied to the Superintendent of Jail, Talaja Central Prison, Navi Mumbai afresh. However, the said application was also rejected on the grounds that the petitioner is not a resident of Maharashtra; that in 2015, while in Nashik Road Central Prison, the petitioner had participated in hunger strike for illegal demands and that the sureties provided by the petitioner were not satisfactory as they are having criminal antecedents.

5. The learned Counsel for the petitioner submits that all the grounds raised by the Jail authority are untenable. He submitted that as regards the first ground stated in the impugned order, same is unsustainable as the Government vide its Notification dated 13.11.2020 amended the order dated 8.5.2020 and permitted release of those convicts also, who are from outside Maharashtra. As regards the second ground, the petitioner was already punished by transferring him to Talaja Central Prison from Nashik Road Central Prison. As far as the third ground regarding unsatisfactory sureties is concerned, the learned Counsel submitted that the petitioner has arranged for sureties through his relatives in Maharashtra, however, the same are rejected on the

ground that they are friends of the relatives of the petitioner and that they are having criminal antecedents. The learned Counsel submitted that as the petitioner is from Uttar Pradesh, it is difficult for him to arrange sureties from Maharashtra but still, he had arranged for sureties through his relatives from Maharashtra, which were wrongly rejected. He, therefore, prays that the petitioner be granted emergency (Covid-19) parole.

6. 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 by the jail authority on the grounds mentioned above. Further, she submitted it is clear from the report called from Superintendent, Taloja Central Prison, Navi Mumbai that there is a serious apprehension about absconding of the petitioner, if he is granted parole. It is also mentioned in the report that the guarantors are incompetent as they are accused of serious offences. Further, if the petitioner is released, there is a threat / danger to the life of the informant and witnesses. The learned APP has submitted that the inmates in Jail 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 regularly 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 said prison. Therefore, the learned APP has submitted that the petitioner should not be released on emergency (Covid-19) parole and Writ Petition be rejected.

7. We have given a 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 pleadings and grounds in the petition, annexures thereto, impugned order/letter of understanding and also report received from the Superintendent of Talaja Central Prison, Navi Mumbai. Upon a careful perusal of the said report received from the prison authority, it appears that proper care is being taken of the convicts in the prison so as to avoid possibility of contracting Covid-19 virus. The report submitted by the Superintendent of Jail, Talaja Central Prison, Navi Mumbai is based upon enquiry and, therefore, it is not desirable to interfere with the said fact finding report. The apprehension expressed by the respondent –

authority is well founded on the basis of the enquiry report submitted by the Superintendent of Jail, Talaja Central Prison, Navi Mumbai. From the perusal of the report received from the Jail authority, it appears that the proposed sureties suggested by the petitioner are not reliable and trustworthy and having criminal antecedents. The reasons assigned in the impugned order/communication are based upon fact finding inquiry and do not warrant interference in the exercise of writ jurisdiction.

8. In that view of the matter, we are unable to persuade ourselves to entertain the prayer of the petitioner to release him on emergency (Covid-19) parole. Hence, the petition stands rejected.

9. Rule is discharged. The writ petition stands disposed of accordingly.

10. In future, if the petitioner is able to furnish competent and eligible sureties, liberty is granted to the petitioner to apply afresh for parole/furlough or Covid parole.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)