

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.190 OF 2021

- | | | |
|----|---------------------------------------|-----------------------|
| 1. | Essa @ Anjum S/o. Abdul Razzaq | } |
| | Memon | } |
| | Age : 52 years, Occ : Prisoner | } |
| | Convict No.C-12082 | } |
| | At present lodged in Central Prison, | } |
| | Nashik Road, Nashik. | } |
| | Permanent Address: | } |
| | Flat No.905, "D" Wing, HDIL Premier | } |
| | Residency, Next to Kohinoor Club, | } |
| | Kurla (W), Mumbai – 400 070. | }.. Petitioner |

Versus

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|----|--|-------------------------|
| 1. | The State of Maharashtra through | } |
| | its Principal Secretary, | } |
| | Home Department, Mantralaya, | } |
| | Mumbai – 32. | } |
| | | } |
| 2. | The Inspector General of Police | } |
| | (Prison) | } |
| | Maharashtra State, | } |
| | Office at Central Prison Yerola, Pune. | } |
| | | } |
| 3. | The Divisional Commissioner, | } |
| | Nashik Division, Office at | } |
| | Nashik Road, Nashik. | } |
| | | } |
| 4. | The Deputy Inspector General (Prison) | } |
| | Office at Central Prison, Harsul, | } |
| | Aurangabad, Tal. & Dist. Aurangabad. | } |
| | | } |
| 5. | The Superintendent of Prison, | } |
| | Central Prison, Nashik Road, Nashik. | } .. Respondents |

Mr.M.M.Chaudhari a/w Mr. S.K.Atiq Ul Rehman for the Petitioner.

Mrs.S.D.Shinde, APP for the Respondent/State.

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

**RESERVED ON : 25th JANUARY, 2021
PRONOUNCED ON : 28th JANUARY, 2021**

JUDGMENT (PER MANISH PITALE, J.)

1. The petitioner is aggrieved by imposition of onerous condition while granting his application for release on emergency death parole. According to the petitioner, the condition imposed upon him of depositing costs of police escort for grant of emergency death parole of three days is unsustainable.
2. The petitioner is a convict undergoing sentence of life imprisonment, upon being convicted and sentenced by TADA Court at Mumbai, in the Bomb Blast Case. He has undergone more than twenty six years of the sentence. On 26th June, 2020, the brother of the petitioner died. Consequently, the petitioner applied for grant of emergency death parole, upon which, respondent No.5 granted such relief only for three days and that too, on the condition that the petitioner or his relatives shall deposit charges of police escort during the said period of three days. It is stated in the petition that when the petitioner asked the amount to be deposited towards such expenses, he was told that it would come to Rs.70,000/- per day.
3. Aggrieved by the said order of respondent No.5, the petitioner approached this Court by way of present writ petition in which, notice was issued on 27th November, 2020. On 25th January, 2021, the petition was taken up for final disposal.

4. Mr.Chaudhari, learned counsel appearing for the petitioner, refers to orders and judgments of this Court, annexed to the petition wherein observations were made by this Court on imposition of such onerous condition for release of emergency death parole. Reference was made to an order passed by the Hon'ble Supreme Court wherein the convict was directed to be released for a period of twenty eight days on parole in a similar situation of death in the family.

5. An affidavit of the petitioner was tendered by the learned counsel for the petitioner specifically stating that although, the brother of the petitioner had died on 26th June, 2020, due to the Covid-19 pandemic, the religious rituals, including the 40th day programme could not be organised. Now, that strict lockdown had been relaxed to some extent and the religious rituals can be performed in the presence of limited family members, the petitioner is reiterating his prayer before this Court for release on emergency death parole, without insisting upon payment of charges for police escort. It is specifically submitted that the religious programmes would start on 28th January, 2021, but the main ritual i.e. Fateha Khwani is to be held on 29th January, 2021.

6. On this basis, the learned counsel for the petitioner vehemently submits that this Court may consider prayer of granting parole to the petitioner for a period of twenty eight days, on usual conditions. It is submitted that the petitioner was granted furlough leave twice and also parole on two occasions. It was submitted that the petitioner would abide by the conditions that may be imposed by this Court and that he undertakes to surrender upon completion of the period of twenty eight days.

7. Mrs.Shinde, learned APP appearing for the State, submitted that the application for grant of emergency death parole was moved immediately after the death of the brother of the petitioner on 26th June, 2020 and now, there did not seem to be any urgency for immediate release of the petitioner on the ground of death of his brother. It was further submitted that the impugned order was passed as per the rules, on condition of payment of charges of police escort.

8. We have heard the learned counsel appearing for the rival parties and also perused the material on record. Although, the application moved by the petitioner for grant of emergency death parole had a sense of urgency in June, 2020, as the death had occurred on 26th June, 2020, we are of the opinion that the affidavit now tendered on behalf of the petitioner does show that even if the death had taken place on 26th June, 2020, the religious rituals in which the petitioner desires to participate, are slated to be undertaken from 28th January, 2021 onwards. The explanation given in the said affidavit as to why the rituals could not be performed immediately after the death of the brother of the petitioner appears to be plausible, in the backdrop of the Covid-19 pandemic. A policy decision was also taken to grant emergency Covid Parole to the convicts.

9. In the present case, it is undisputed that the petitioner is undergoing sentence of life imprisonment and that he has already undergone more than twenty six years of imprisonment. It is also on record that the petitioner was earlier released on furlough leave and on parole and he reported back to jail in time. The reasons stated in

the affidavit, tendered on behalf of the petitioner dated 16th January, 2021, shows that the religious rituals pertaining to the death of the petitioner's brother are to be undertaken from 28th January, 2021 and the main ritual of Fateha Khwani is to be held on 29th January, 2021.

10. Considering the said factual material on record and taking into account the objectives incorporated in Rule 1(A) of the Prisons (Bombay Furlough and Parole) Rules, 1959, we are of the opinion that the present writ petition deserves to be allowed.

11. Accordingly, the writ petition is allowed. Respondent No.5 is directed to release the petitioner forthwith on parole for a period of seven (7) days, subject to usual conditions as required under the aforesaid Rules, without police escort. The petitioner shall report to the Kurla Police Station, Kurla (West), Mumbai on third and sixth day of release.

12. The petitioner shall abide by such conditions and he shall surrender on completion of the aforesaid period of seven (7) days. During this period of seven (7) days, the petitioner shall reside with his family for attending the said religious rituals concerning the death of his brother.

13. The writ petition is allowed in the above terms.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)