

VISHWANATH
SATYANARAYANA
SHERLA

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VISHWANATH
SATYANARAYANA
SHERLA

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

CRIMINAL WRIT PETITION NO.2727 OF 2021

Devidas Bhimrao Borse)
age: 53, occ.: -)
r/at – At & Post: Vagir – Kheda)
Taluka – Malegaon, District – Nashik) ... Petitioner
(At present lodged at Nashik Road Central)
Prison))

Vs.

1) State of Maharashtra)
Through Chief Secretary, Home Department,)
Mantralaya, Mumbai.) .. Respondents
2) The Superintendent of Nashik Road Central)
Prison, Nashik)

Ms.Aisa Ansari for the Petitioner

Mrs.M.H. Mhatre, APP, for Respondent – State

**CORAM: S.S. SHINDE &
N.J. JAMADAR, JJ.**

**JUDGMENT RESERVED ON: SEPTEMBER 3, 2021
JUDGMENT DELIVERED ON: SEPTEMBER 7, 2021**

JUDGMENT (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. By this Writ Petition, the petitioner has challenged the order passed by Respondent No.2 – Superintendent of Jail, dated 29th May, 2021 whereby the application of the petitioner for grant of emergency Covid – 19 parole for 45 days was rejected.

3. The petitioner is a convict undergoing sentence of life imprisonment. The petitioner has been in jail for more than 6 years.

4. In view of the Covid-19 pandemic and the amendment in the Prisons (Bombay Furlough and Parole) Rules, 1959, the petitioner applied for grant of emergency Covid-19 parole, which was rejected by Respondent No.2 – Superintendent of Jail, Nashik Road Central Prison, District Nashik vide order dated 4th June, 2020. The said application was rejected by the aforesaid impugned order on the ground that the petitioner had overstayed the period of furlough leave and had to be arrested and brought back to the prison through police. The petitioner challenged the said order dated 4th June, 2020 by filing Criminal Writ Petition No.192 of 2021 in this Court, however, the same was rejected vide order dated 16th February, 2021. Thereafter, the petitioner preferred another application for Covid-19 Emergency Parole

leave on 21st May, 2021, which was rejected on 29th May, 2021 on the ground that on 17.11.2014, the petitioner had reported late by 25 days to the prison and on 11.8.2016, he reported late by 158 days. It is also apprehended that there is possibility that the petitioner may abscond if he is granted emergency parole.

5. The learned Counsel appearing for the Petitioner submitted that on the first occasion, i.e., 17th November, 2014, the petitioner surrendered to jail on his own after 25 days because he had met with an accident. On the second occasion i.e., 11th August, 2016, his mother was suffering from Cancer and, therefore, he had reported late to the prison by 158 days. It is submitted that the Superintendent of Nashik Road Central Prison failed to consider that for late surrender by the petitioner, a case has been filed under section 224 of the Code of Criminal Procedure before the Sessions Court, Malegaon which is yet to be decided as to whether the petitioner has actually absconded or not. He has, therefore, submitted that the concerned authority should have taken into account the said case and that it is pending before the competent Court. The learned Counsel also submitted that during the trial, the petitioner was on bail for about 5 years and he had

never absconded and after his conviction under section 302 of the Indian Penal Code, he surrendered to the jail. The learned Counsel has, therefore, prayed that since last 5 years, he has not been released on any leave and considering the present pandemic and his age, he may be granted parole leave on the terms and conditions as this Court may deem fit and proper.

6. On the other hand, the learned Public Prosecutor appearing for the State, opposed the petition for grant of emergency Covid-19 parole. She invited our attention to the impugned order and submitted that there is no overcrowding in the Nasik Road Central Prison. There is a separate ward to treat the Covid patients. All the convicts/under-trial prisoners above 45 years have been vaccinated. All possible care to prevent the spread of Covid-19 virus is being taken in the said prison and, therefore, the petitioner is not entitled for the Covid-19 emergency parole. It is submitted by the learned APP that when the petitioner was released on furlough on 17th November, 2014, instead of reporting back within time, he overstayed for 25 days outside the prison. On 11th August, 2016, the petitioner was granted furlough, however, he did not report in time and surrendered late by 158 days. In case, the

petitioner is released, there is possibility of absconding. The Criminal Writ Petition No.192 of 2021 filed by the petitioner on the same set of facts and grounds has been already rejected by this Court on 16th February, 2021.

7. We have given careful consideration to the rival submissions. With the able assistance of the learned Counsel appearing for the petitioner and the learned APP appearing for the Respondent – State, carefully perused the reasons assigned in the impugned order, the grounds taken in the petition, the annexures thereto and the order passed by this Court on 16th February, 2021 in Criminal Writ Petition No.192 of 2021 filed by the present petitioner and this Court is of the opinion that the petition deserves no consideration for the following reasons:

Firstly, the petitioner herein had filed a Criminal Writ Petition No.192 of 2021 on the same grounds, which was rejected by this Court (Coram: S.S. Shinde & Manish Pitale, J.) on 16th February, 2021.

Secondly, the ground taken by the petitioner that when he was released on furlough on 11th August, 2016, he overstayed for

158 days over and above the period for which he was granted furlough, however, an offence was registered against him under section 224 of the Code of Criminal Procedure and, therefore, the said reason that he overstayed for 158 days cannot be cited while entertaining his prayer for Covid-19 emergency parole. In this respect, it needs to be mentioned that the said ground was available when the aforesaid Criminal Writ Petition No.192 of 2021 filed by the petitioner was heard and decided.

There is no new ground raised which requires modification of the order dated 16th February, 2021. While rejecting the said petition, no liberty was granted to the petitioner to file the present petition.

8. Apart from the aforesaid reasons, it appears that all the convicts in the Nashik Road Central Prison are vaccinated and proper care is being taken to prevent the spread of Covid-19 virus. It is submitted by the learned APP appearing for the State that the number of convicts / under-trial prisoners in the said prison are not more than its capacity and there is no overcrowding as such. In that view of the matter, we are unable to persuade ourselves to grant any relief to the petitioner. In case the petitioner is released

on parole, there is every possibility of him absconding keeping in view the past experience when he was released on furlough/parole. Hence, no case is made out. The petition stands rejected.

9. The Writ Petition stands disposed of accordingly.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)