

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

CRIMINAL WRIT PETITION NO.2113 OF 2021

Samsher @ Navajali @ Abbas Nawaz Shaha Petitioner

versus

The State of Maharashtra Respondent

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- Mr.Ajinkya Udane, Advocate appointed through Legal Aid for Petitioner.
- Ms.A.S. Pai, PP for State/Respondent.

**CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, J.**

DATE : 2 DECEMBER 2021

P.C. :

. This is a Petition through jail.

2. Heard the learned counsel for the Petitioner appointed through Legal Aid and the learned Public Prosecutor.

3. The Petitioner had applied for emergency (Covid-19) parole. The application made by the Petitioner on 14 September 2020 was rejected by the Superintendent, Nashik Road, Central Prison on 28 September 2020 on the ground that the Petitioner was

not granted parole or furlough leave earlier. The learned counsel for the Petitioner and the learned PP are *ad-idem* that this ground is held to be not valid by this Court in series of decisions. It is not necessary to dwell further on this order as by subsequent order dated 8 June 2021 the Petitioner has been granted emergency (Covid-19) parole on certain conditions. The relief sought for in the application is worked out.

4. The condition imposed for grant of emergency (Covid-19) parole requires the Petitioner to furnish cash surety of Rs.15,000/-, personal bond of Rs.10,000/-, one surety of Rs.15,000/- and one of Rs.15,000/-. These requirements would generally to be arranged by some relative or friend of the inmates, who is outside the jail.

5. The learned counsel for the Petitioner has drawn our attention to the fact that the copy of the order granting emergency (Covid-19) parole is addressed to the Petitioner, at the address referring to by him by his prisoner number in the Central Prison. The learned counsel for the Petitioner submitted that it would benefit the inmates in whose favour emergency (Covid-19) parole is granted if the relatives are also informed of the order granting emergency (Covid-19) parole, so that they can make necessary arrangements in time. He submitted that many inmates, who are not able to make arrangements in time.

6. Due to the pandemic (Covid-19) the State had amended the Rules of the Maharashtra Prison (Mumbai Furlough and Parole) Rules, 1959 and introduced clause (C) in Rule 19 which was primarily to decongest the prisons so that the spread of pandemic in the prison can be avoided. Therefore if emergency (Covid-19) parole granted to an inmate, it would be of importance that if he is released immediately. Therefore if the order is implemented as early as possible it would sub-serve the object of Rule 19(C) to decongest the jails in light of the object of avoiding the spread of pandemic.

7. Apart from the emergency parole, even for regular parole and furlough Article 39-A of the Constitution of India needs to be kept in mind. Under Article 39-A the state will endeavor that the justice is not denied to any citizen by reason of economic or other disabilities, lack of education is one of the concerns. It would be in furtherance of the object of Article 39-A if the inmate is allowed to mention in the application that the order granting parole or furlough be communicated to any of his relatives and the concerned jail sends the same to the person named in the application or the authority informing the inmate in whose favour the order is passed to communicate the same to any relative or friend to comply with the condition.

8. The Rules of 1959 contains appendix which has forms. Form 'D' is a form of application for release on parole under Rule 22. The Form 'E' is the form of the order of release on furlough/parole under Rule 29. Both, Form 'D' and Form 'E', do not contain the stipulation which we have indicated above.

9. The learned counsel for the Petitioner is right in contending that it is necessary that such a stipulation should be provided in the order or in the application. Since the Forms are prescribed by the Rules of 1959, the Forms will have to be modified by appropriate amendment to the Rules. However if the authorities are of the opinion that it will be helpful to inform the friend or relatives of the inmate as indicated above, they can always do so without waiting for the modification in the form, as it is always open to take beneficial steps over and above what is stated in the statute, more particularly in light of Article 39-A of the Constitution of India. If the Secretary, (Home) is of the opinion that for this additional stipulation, in furtherance of obligation of the State under Article 39-A, modification of the Rules is not required, then the Secretary, (Home) can issue necessary circulars to the jail authorities.

10. Referring back to the case in hand, the application as stated above is worked out and is disposed of.

11. The Registry to send the copy of the order before the Secretary, Home Department, State of Maharashtra. Copy be also sent to the Member, Secretary on Legal Services Authority, to examine the issue.

12. The parties will act on authenticated copy of this order.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)