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

CRIMINAL WRIT PETITION NO. 2667 OF 2021

Sunilkumar S/o Adiklal Mandal

...Petitioner

Versus

The State of Maharashtra

...Respondent

...

Mr. Rupesh Jaiswal for the petitioner.

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

...

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

DATE : 11th AUGUST, 2021.

P.C.:

1. Heard Mr. Jaiswal, the learned counsel appearing for the petitioner and Mrs. Mhatre, the learned APP for the State.

2. Rule. Rule made returnable forthwith and heard with the consent of learned counsel for the parties.

3. The Petitioner being aggrieved by the condition No. 5 of the order dated 12.06.2021 whereby he is ordered to be released on emergency Covid-19 parole. The said condition stipulates that the petitioner shall furnish cash security of Rs. 20,000/- and a personal recognizance of Rs. 15,000/-. In addition, the petitioner shall

furnish two sureties in the sum of Rs. 20,000/- each, one of whom shall be a government servant, and another a relative.

4. Mr. Jaiswal, the learned counsel for the petitioner submits that the aforesaid condition of furnishing surety, who is a government servant, is harsh and the Petitioner's right to be released on parole is virtually defeated by imposing the said condition.

5. On the other hand, learned APP supports the impugned order. A copy of the notification dated 26th August, 2016 is tendered for the perusal of the Court. In Rule No. 24A of the Notification, the categories of persons who can be accepted as sureties are indicated. It provides that two of the sureties shall be

- (i) State of Central Government servant, or
- (ii) Elected office bearers or
- (iii) Family members having good conduct or
- (iv) Friends and relatives having good conduct.

6. It is pertinent to note that Rule 24A has since been substituted by notification dated 14th April, 2018. In any event, if the said notification is considered as a guideline, the aforesaid

prescription does not provide that the surety must be a government servant. Sureties can be from any of the four categories.

7. In this view of the matter, the purpose for which the surety is insisted upon would be served if an option as given to the petitioner to furnish a surety who satisfied the qualification provided in category Nos. 3 and 4 i.e. (iii) Family members having good conduct (iv) Friends and relatives having good conduct.

8. In our view, insistence on furnishing a surety who is a government servant may, in a given case, frustrate the very object of directing the released of the prisoner on emergency parole. Such a condition operates onerously.

9. Thus, the petition deserves to be allowed by modifying the Condition No. 5 to the aforesaid extent.

10. Upon the Petitioner complying with the rest of the conditions, the petitioner released on furnishing a surety who is a family member, friend or relative having good conduct, instead of a government servant.

11. The petition stands allowed in the aforesaid terms.
12. Rule made absolute to above extent.
13. All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)