

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1134 OF 2021

Aftab Mushtaq Khan

: Petitioner.

Versus

The State of Maharashtra & anr.

: Respondents.

Mr. Sambhaji Kharatmol, appointed advocate for the Petitioner (Absent)

Mr. Deepaki Thakre, PP a/w Mr. S R Shinde, APP for the Respondent/State.

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

DATE : 29th APRIL 2021

P. C.

1 The Petitioner has filed the present petition through jail for releasing him on emergency covid-19 parole.

2 The Petitioner herein (Convict No.C/9750) has been convicted for the offences punishable under section 376(2) of the Indian Penal Code by the learned Sessions Judge, City Civil and Sessions Court, Mumbai on 26/09/2014 in Sessions Case No.920/2013 and sentenced him to suffer imprisonment for life and to pay fine of Rs.1000/- in default sentence to suffer imprisonment for 2 months. The Petitioner has undergone sentence of 6 years 6 months 23 days.

3 The Petitioner had applied for grant of emergency Covid-19 parole in view of the Covide-19 Pandemic. However, the said application was rejected by the Respondent-Authority vide order dated 28/09/2020 on the ground that the petitioner was never released on parole/furlough till date, and in view of

Government Notification dated 08/05/2020 the Petitioner was not entitled to be released on emergency parole.

4 When the matter is called out through video conferencing the advocate appointed to represent the Petitioner in this Petition is not present.

5 Learned PP appearing for Respondent-State submits that the prayer of the petitioner to release him on emergency (Covid-19) parole has rightly been turned down, relying upon the notification dated 8th May 2020 issued by the Government of Maharashtra, Home Department. It is submitted that the requisite official capacity to accommodate the convicts in Nashik Central Prison is 3178 inmates. By end of March 2021, there were 2364 convicts (68- women convicts and 2243 men convicts). It is submitted that in the Nashik Central Prison 807 more convicts can be accommodated. In order to prevent spread of Covid-19 virus, inmates/convicts who have been recently lodged in the said prison are kept in isolation in separate hall and after necessary health checkup and tests, they are kept in the separate room in the prison. There is thermal scanning and rapid antigen tests are conducted on regular basis. In case, anybody is tested positive one separate isolation room No. 8 is maintained for their stay and treatment. Therefore, the learned PP submits that the prayer of the petitioner to release him on emergency (Covid-19) parole cannot be considered favourably and the present Writ Petition be rejected.

6 We have given careful consideration to the submissions of the learned APP appearing for the Respondent – State. With the able assistance of the learned PP appearing for the State, we have perused the pleadings and grounds in the petition, annexures thereto, impugned order / letter of understanding and also the report received from the Superintendent of Nashik Road Central Prison, Nashik. 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. In the said report, it is stated that the Petitioner was never released on furlough/parole till date. The Superintendent, Nashik Road Central Prison, Nashik, has expressed an apprehension that in case the petitioner is released on parole, he may abscond and may not come back to the jail.

7 In the said report, the Respondent-Authority has stated that the Petitioner has been convicted by the City Civil and Sessions Court Mumbai for the offence punishable under Section 376(2) and in terms of Rule 4(12) of the Prisons (Bombay Furlough and Parole) Rules, 1959 the Petitioner is not entitled for furlough/parole leave. Rule 4(12) of the Prisons (Bombay Furlough and Parole) Rules, 1959 which forms the basis of rejection of the Petitioner's application reads thus :-

“4 Eligibility for furlough :-

All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough :-

(1 to 11)

(12) Prisoners who are considered dangerous or have been involved in serious prison violence like assault, outbreak, riot, mutiny or escape, or who have been found to be instigating the serious violation of prison discipline, smuggling of narcotic and psychotropic substances including convicted under Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), rape or rape with murder, attempt to rape with murder and foreigner prisoners (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective section);

(13) to (21)

8 In that view of the matter, and in view of Rule 4(12) of the Prisons (Bombay Furlough and Parole) Rules, 1959 we are not inclined to entertain the prayer of the petitioner to release him on Covid – 19 parole. Hence, the petition is rejected. However, the Petitioner would be entitled to apply afresh after completion of statutory period provided under the relevant Rules.

[MANISH PITALE, J]

[S. S. SHINDE , J]