

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1132 OF 2021

Sameer Khan @ Vasim Azgar Nihal Azgar : Petitioner.

Versus

The State of Maharashtra : Respondent.

Mr. Manoj Gupte, appointed advocate for the Petitioner – Absent.

Mr. Deepak Thakre, PP a/w Mr. J P Yagnik, APP for the Respondent/State.

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

DATE : 29th APRIL 2021

P.C.

1 The Petitioner has filed this Petition for grant of emergency Covide-19 parole. The Petitioner (Convict No.C/9550) has been convicted by the Sessions Court, Raigad Alibag on 27/11/2014 in Sessions Case No.20/2013 for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to suffer imprisonment for life and to pay fine of Rs.5000/- in default sentence to suffer imprisonment for 1 year. The Petitioner has undergone sentence of 08 years 05 months 27 days.

2 The application of the Petitioner for grant of emergency Covide-19 parole has been 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 the Government Notification dated

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

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

4 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.

5 We have given careful consideration to the submissions of learned PP appearing for the Respondent-State. With the able assistance of learned PP,

we have perused the pleadings and grounds in the petition, annexures thereto, impugned order/letter of understanding and also report received from the Superintendent of Nashik Central Prison, Nashik. Upon careful perusal of the said report received from the prison authority, it clearly appears on record that the proper care is being taken of the convicts in the prison, so as to, avoid possibility of contracting Covid-19 virus. However, in the impugned order/letter of understanding a reason given is that, the Petitioner herein was never released on furlough/parole, in past.

6 In our opinion, merely because the petitioner was not released earlier cannot be a ground for rejecting the application of the petitioner for emergency parole. This Court in Criminal Writ Petition-ASDB-LD-VC No. 65 of 2020 (Milind Ashok Patil & Ors. Vs. State of Maharashtra & Ors.) had occasion to consider similar issue and a view is taken in the said case that merely because the petitioner was not released twice in the past on parole/furlough cannot be a ground for rejecting the application for emergency parole.

7 In that view of the matter, the writ petition is partly allowed. The impugned order dated 28.09.2020 passed by Respondent-authority, is quashed and set aside. The petitioner is granted liberty to apply afresh for grant of emergency Covid-19 parole within one week from today. Upon filing such an application, the respondent authority shall decide the same on its own merits,

as expeditiously as possible, however, within two weeks from the date of filing of the application in accordance with the Prisons (Bombay Furlough and Parole) Rules, 1959, and keeping in view the factors like the extent of spread of Covid-19 virus and conditions in jail.

8 The writ petition stands disposed of accordingly.

[MANISH PITALE, J]

[S. S. SHINDE , J]