

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

CRIMINAL WRIT PETITION NO.983 OF 2021

Mohammed Badshaha Mohammad Ismail
Ansari

Age: adult, Occ.: Driver

R/at: Zopada No.116, Sant Sawata Mali Road ... Petitioner
Reay Road, Mazgaon, Mumbai – 10
(Currently lodged in Nashik Road Central
Prison, Nashik)

Vs.

1) State of Maharashtra

2) The Superintendent of Prison

Nashik Road Central Prison, Nashik

... Respondents

Ms.Priyanka Chavan, advocate appointed for the Petitioner

Mr.Deepak Thakare, Public Prosecutor with Mr.S.R. Shinde, APP,
for Respondent – State

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

DATED: MAY 4, 2021

ORAL 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. The Petitioner has filed the present petition for the following
substantial reliefs:

“a) This Hon’ble Court may be pleased to quash and set aside the order/letter of understanding dated 29.09.2020, passed by the Superintendent of Prison, Nashik Road Central Prison, Nashik.

b) This Hon’ble Court may be pleased to release the Petitioner on emergency parole for a period of 45 days, on any terms and conditions as this Hon’ble Court may deem fit and proper.”

3. The Petitioner herein (Convict No.C-9233), is convicted for the offences punishable under sections 376, 377, 458, 392, 506, 201 of Indian Penal Code and sentenced to suffer life imprisonment and payment of fine of Rs.27,000/-, in Sessions Case No.174 of 2013 on 27.12.2013 by the Sessions Court at Mumbai.

4. Learned Counsel appearing for the Petitioner submits that the petitioner has undergone more than 8 years of imprisonment and he is currently lodged in the Nashik Road Central Prison. It is submitted that the application of the petitioner to release him on emergency (Covid-19) parole was rejected on the ground that the petitioner was never released on parole/furlough, till date.

Therefore, the learned Counsel appearing for the Petitioner submits that merely because the Petitioner was not released earlier, is no ground to reject his application for emergency (Covid-19) parole.

5. Learned APP 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 inmates are less in number as compared to the capacity of the prison. Utmost care is being taken in the prison by the officers and employees working in the prison, by examining the convicts by thermal scanning and RT-PCR tests. At present, there are no convicts who are tested positive/Covid-19 affected in the prison. Therefore, learned APP submits that the prayer of the petitioner to release him on emergency (Covid-19) parole cannot be favorably considered.

6. We have given careful consideration to the submissions of learned counsel appearing for the Petitioner and the learned APP appearing for the Respondent – State. With the able assistance

of the learned Counsel appearing for the Petitioner and the learned APP, we have perused pleadings and grounds in the petition, annexures thereto, impugned order/letter of understanding and also report received from the Superintendent of Nashik Road Central Prison, Nashik. Upon 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. However, in the impugned order/letter of understanding, the reason given is that the Petitioner herein was never released on furlough or parole, till date.

7. In our opinion, merely because the petitioner was never released earlier cannot be a ground for rejecting the application of the petitioner for emergency parole. This issue has been dealt with by this Court in the case of **Milind Ashok Patil & Ors. Vs. State of Maharashtra & Ors.**¹, wherein this Court had an occasion to consider a similar issue and a view is taken in the said case that merely because the petitioner was not released once in the past on parole/furlough, it cannot be a ground for rejecting the application for emergency parole.

1 Criminal Writ Petition-ASDB-LDVC No.65 of 2020 decided on 16th July, 2020

8. In that view of the matter, the Writ Petition is partly allowed. The impugned order dated 29.9.2020 passed by Respondent No.2, 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.

9. Rule is partly made absolute to above extent. The Writ Petition stands disposed of accordingly.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)