

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

CRIMINAL WRIT PETITION NO.623 OF 2021

Jaharsingh Harisingh Barela
(prisoner No.C/7904)

Age 45 years, Occ.: Nil,

At present Nashik Road Central Prison, Nashik

... Petitioner

Vs.

1. State of Maharashtra

2. The Superintendent

Nashik Road Central Prison, District Nashik.

... Respondents

Mr.Sham V. Walve, 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.**

JUDGEMENT RESERVED ON: APRIL 29, 2021

JUDGEMENT DELIVERED ON: MAY 4, 2021

JUDGMENT [PER S. S. SHINDE, J.]:

Rule. Rule made returnable forthwith and heard with the
consent of the learned Counsel appearing for the parties.

2. The Petitioner has filed the present petition for the following
substantial relief:

“C) The order passed by Respondent No.2 i.e. The Superintendent, Nashik Road Central Prison, Nashik dated 28/09/2020 may kindly be quashed and set aside, which is at **EXHIBIT C**”

3. The Petitioner herein (Convict No.C-7904), is convicted for the offence punishable under sections 302 and 235 (2) of Indian Penal Code for life imprisonment and fine of Rs.500/-, in Sessions Case No.389 of 2007 on 31.8.2009 by the Sessions Court at Mumbai.

4. Learned Counsel appearing for the Petitioner submits that the petitioner has undergone more than 14 years of imprisonment and he is 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 never released till date, 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 learned APP appearing for the Respondent – State. With the able assistance of learned counsel appearing for the Petitioner and 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,

District 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. However, in the impugned order/letter of understanding, the reason given is that the Petitioner herein was never released in the past, till date.

7. In our opinion, merely because the petitioner was never released on parole / furlough 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 its decision dated 16th July, 2020 in **Criminal Writ Petition-ASDB-LD-VC No. 65 of 2020 (Milind Ashok Patil & Ors. Vs. State of Maharashtra & Ors.)**, 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 never released in the past on parole/furlough, cannot be a ground for rejecting the application for emergency parole.

8. In that view of the matter, the writ petition is allowed. The impugned order dated 28.9.2020 passed by Respondent No.2, is quashed and set aside. The petitioner be released on emergency

Covid-19 parole in accordance with the Prisons (Bombay Furlough and Parole) Rules, 1959.

9. Rule is made absolute. The writ petition stands disposed of accordingly.

10. We appreciate the able assistance rendered by Advocate Mr. Sham Walve, appointed for representing the petitioner. We quantify his fees at Rs.5,000/- to be paid by High Court Legal Services Committee, Mumbai, within four weeks from the receipt of a copy of this order.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)