

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

CRIMINAL WRIT PETITION NO.972 OF 2021

Shaikh Akhtar Shaikh Gafoor

... Petitioner

Vs.

State of Maharashtra & another

... Respondents

Ms.Janhavi Karnik, 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: APRIL 29, 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 relief:

“III. This Hon’ble Court be pleased to allow the Application dated 07th September, 2020 and 05th October, 2020 of the Petitioner on such terms and conditions as this Hon’ble Court may deem fit and proper.”

2. The Petitioner herein (Convict No.C-5654), is convicted for the offences punishable under sections 302, 149, 147, 148 and 326 and 341 of the Indian Penal Code for life imprisonment and fine of Rs.800/-, in Sessions Case No.204 of 1993 on 29.9.2005 by the Sessions Court at Jalgaon.

3. Learned Counsel appearing for the Petitioner submits that the petitioner has undergone more than 16 years of imprisonment and he is lodged in the Nashik Road Central Prison, Nashik. 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 released on parole/furlough in the past, however, he had jumped furlough on one such occasion and he had to be arrested and brought to the prison on 16.3.2017 after a delay of 3445 days from the date of expiry of his furlough leave period. The learned Counsel appearing for the Petitioner submits that for the said late reporting, the petitioner had been punished and this cannot be a ground to reject his application for emergency (Covid-19) parole.

4. 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. She submitted that the petitioner has actually undergone a sentence of 7 years and 4 months and 9 days only. Further, the petitioner had jumped furlough leave granted to him in 2007 as he had to be arrested and brought back to the prison by the police on 16.3.2017 after a delay of 3445 days in reporting back to the prison. Therefore, the learned APP submits that the prayer of the petitioner to release him on emergency (Covid-19) parole cannot be considered favourably and the present application be rejected.

5. We have given careful consideration to the submissions of the 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 the learned

APP 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 when the petitioner was released earlier on furlough leave, he did not report on time after completion of the period of the furlough leave and he was required to be arrested and brought back to the jail after 3445 days from the date of expiry of his furlough leave period. 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. The apprehension expressed by the respondent – authority is well founded inasmuch as when the petitioner was earlier released on furlough, he did not report back on completion of the period of furlough leave and thereafter, he was arrested and brought back to the jail after 3445 days.

6. In that view of the matter, we are not inclined to entertain the prayer of the petitioner to release him on Covid – 19 parole. Hence, the petition is rejected.

7. We appreciate the able assistance rendered by Advocate Ms.Janhavi Karnik, appointed for representing the petitioner. We quantify her 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.)