

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.321 OF 2021

Dilshad Hussain Siddiqui
Aged 31 yrs. R/o. 703, Bldg. No.6,
Qureshi Compound, Behrambaug,
Jogeshwari – 400102.
(now confined at Nasik Road Central
Prison, Nasik Road)

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]..... Petitioner.

Versus

- 1] The State of Maharashtra
Through the office of the Public
Prosecutor, High Court, Mumbai

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- 2] The Superintendent,
Nasik Road Central Prison,
Nasik Road.

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]..... Respondents.

Mr. Manas Gavankar for the Petitioner.
Mrs.Aruna S Pai, APP for the Respondent/State.

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

Reserved on : 11th FEBRUARY 2021
Pronounced on: 16th FEBRUARY 2021

JUDGMENT : (PER S S SHINDE, J)

1 Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2 By this Writ Petition the Petitioner seeks the following substantial reliefs :-

“(a) this Hon’ble Court be pleased to issue appropriate writ, order or direction to quash and set aside the impugned order dated 17-10-2020 passed by Respondent No.2.

(b) This Hon’ble Court be pleased to issue appropriate writ, order or direction ordering and directing Respondent No.2 to release the petitioner on emergency parole leave on usual terms and conditions or on such terms and conditions as this Hon’ble Court deems fit and proper.”

3 The learned counsel appearing for the Petitioner submits that the Petitioner is seeking emergency parole on the ground of pandemic Covid 19, and in view of notification dated 08/05/2020 issued by the Government of Maharashtra, the Petitioner is entitled for emergency Covid-19 Parole. It is submitted that the Petitioner is an accused in Sessions Case No.800 of 2008 arising out of CR No.111 of 2008 registered with Jogeshwari Police Station for the offence punishable under Section 394 r/w 397 of the Indian Penal Code and he has been convicted by the learned Ad-Hoc Additional Sessions Judge, Mumbai and sentenced him to suffer imprisonment for 7 years and fine of Rs.10,000/- in default 6 months rigorous imprisonment.

4 The learned counsel for the Petitioner submits that on 14/08/2020 the Petitioner filed application for emergency parole leave on the ground of outbreak of Covid 19 pandemic, however, the Respondent No.2 by order dated

20/08/2020 rejected the said application on the ground that the Petitioner had not paid the fine and his sentence was of 7 years and 6 months and as the Petitioner had not come on parole/furlough on two earlier occasions, he was not eligible for grant of emergency parole. It is submitted that thereafter the Petitioner by his fresh application dated 28/09/2020 applied for emergency parole leave on the ground of Covid-19, however, by the impugned order dated 17-10-2020 the Respondent No.2 again rejected the said application on the ground that prison authorities have been taken measures to curb the spread of Covid-19 in the prison and the prisoners convicted for the offences punishable under Section 392 to 402 of the Indian Penal Code are not eligible for parole/furlough leave. It is submitted that the prayer of the Petitioner for releasing him on emergency parole leave on the aforesaid ground cannot be rejected by Respondent No.2. The learned counsel appearing for the Petitioner therefore submits that the present Petition deserves to be allowed.

5 On the other hand Mrs. Aruna S Pai, the learned APP appearing for the Respondent/State vehemently opposed the prayer of the Petitioner. She submitted that Respondent No.2 has rightly rejected the earlier application of the Petitioner for emergency parole leave on the ground that the petitioner had not paid the fine and the petitioner has been sentenced for 7 years and 6 months and he had not released on parole/furlough on two earlier occasions. She further submits that by the impugned order dated 17/10/2020 the

Respondent No.2 has rightly rejected the 2nd application filed by the Petitioner for emergency parole leave as in view of the guidelines laid down by Government Notification dated 08/05/2020 the Petitioner is not entitled to be released on emergency parole.

6 We have given our due consideration to the rival submissions of the learned counsel appearing for the parties. With their able assistance we have perused the pleadings, grounds taken in the Petition and annexures thereto.

7 The Petitioner is an accused in Sessions Case No.800 of 2008 and the learned Ad-hoc Sessions Judge, Mumbai convicted the Petitioner for the offence punishable under Section 394 r/w 397 of the Indian Penal Code and sentenced him to suffer imprisonment for 7 years and fine of Rs.10,000/- in default 6 months of rigorous imprisonment. The Petitioner is undergoing his sentence in Nasik Road Central Prison.

8 As stated herein above, while rejecting the application of the Petitioner, the Respondent No.2 has observed that the Petitioner was convicted for an offence punishable under Section 394 r/w 397 of the Indian Penal Code. Rule 4 (2) 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)
- (2) Prisoners convicted of offences under sections 392 to 402 (both inclusive) of the Indian Penal Code (Prisoners may be eligible for furlough after completion of stipulated sentence in the respective Section);
- (3) to (21)

9 It is has been brought to our notice by the learned APP appearing for the Respondent/State that in pursuance of release of number of inmates due to Covid-19 pandemic, now the situation in Nashik Road Central Prison had changed substantially. Considering the fact situation as on today, we find substance in the contention raised by the learned APP appearing for the Respondent/State.

10 In view of the aforesaid Rule 4(2) of the Prisons (Bombay Furlough and Parole) Rules, 1959 and in view of the aforesaid reasons, the Petitioner is not entitled for the release on emergency Covid-19 Parole leave since he has not undergone the sentence awarded under Section 394 r/w 397 of the Indian Penal Code. The reasons recorded by the 2nd Respondent in the impugned order while rejecting the application of the Petitioner needs no

interference. The Respondent No.2 has rightly rejected the application of the Petitioner for emergency. There is no merit in the Petition. Accordingly the Petition stands rejected.

[MANISH PITALE, J]

[S. S. SHINDE , J]