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

CRIMINAL WRIT PETITION NO.2759 OF 2021

Kishore Popat Devare

25 years, Occ.: Nil

Currently lodged in Nashik Road Central Prison,
Nashik

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... Petitioner

Vs.

1) State of Maharashtra

2) The Superintendent,
Nashik Road Central Prison, Nashik

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.. Respondents

Mr.Aniket Vagal for the Petitioner

Ms.Sangeeta Shinde, APP, for Respondent – State

**CORAM: S.S. SHINDE &
N.J. JAMADAR, JJ.**

**JUDGMENT RESERVED ON: SEPTEMBER 9, 2021
JUDGMENT DELIVERED ON: SEPTEMBER 14, 2021**

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. By this Writ Petition, the petitioner has challenged the order passed by Respondent No.2 – Superintendent of Nashik Road Central Prison, Nashik dated 26th June, 2021 whereby the application of the petitioner for grant of emergency Covid – 19 parole for 45 days was rejected.

3. The petitioner is a convict undergoing sentence of life imprisonment. The petitioner has been in jail for about 5 years and 4 months.

4. In view of the Covid-19 pandemic and the amendment in the Prisons (Bombay Furlough and Parole) Rules, 1959 (for short, 'the said Rules'), the petitioner had applied for grant of emergency Covid-19 parole, which was rejected by Respondent No.2 – Superintendent of Jail, Nashik Road Central Prison, District Nashik vide order dated 28th September, 2020. The said order dated 28th September, 2020 was challenged before this Court by the petitioner by preferring Criminal Writ Petition No.535 of 2021. This Court (Coram: S.S. Shinde & Manish Pitale, JJ.) vide its order dated April 29, 2021 partly allowed the petition by quashing the impugned order and giving an opportunity to the petitioner to file a fresh application within one week before the concerned

Respondent / authorities. Pursuant to the said order dated April 29, 2021, the petitioner preferred a fresh application before the Superintendent of Nashik Road Central Prison on 12th May, 2021, however, the said application was rejected vide order dated 19th May, 2021. Thereafter, the petitioner preferred another application dated 1st June, 2021 before the Superintendent of Nashik Road Central Prison, which was also rejected on 26th June, 2021 and hence, this Petition.

5. The learned Counsel appearing for the Petitioner submitted that the Respondent – Superintendent of Nashik Road Central Prison has rejected his applications dated 12th May, 2021 and 16th June, 2021 on the same grounds i.e., the petitioner was never released on any leave and one case under section 224 of the Indian Penal Code was registered against the petitioner. The learned Counsel has, therefore, prayed that since last 5 years, he has not been released on any leave and considering the present pandemic, he may be granted Covid – 19 emergency parole leave on the terms and conditions as this Court may deem fit and proper.

6. On the other hand, the learned Public Prosecutor appearing for the State, opposed the petition for grant of emergency Covid-

19 parole. She has invited our attention to the impugned order and submitted that there is no overcrowding in the Nasik Road Central Prison. There is a separate ward to treat the Covid patients. All the convicts/under-trial prisoners above 45 years have been vaccinated. All possible care to prevent the spread of Covid-19 virus is being taken in the said prison and, therefore, the petitioner is not entitled for the Covid-19 emergency parole. It is further submitted that in case, the petitioner is released, there is a possibility of absconding.

7. We have given careful consideration to the rival submissions. With the able assistance of the learned Counsel appearing for the petitioner and the learned APP appearing for the Respondent – State, carefully perused the reasons assigned in the impugned order, the grounds taken in the petition, the annexures thereto and the order passed by this Court on 29th April, 2021, in Criminal Writ Petition No.535 of 2021 filed by the present petitioner.

8. It appears that all the convicts in the Nashik Road Central Prison are vaccinated and proper care is being taken to prevent the spread of Covid-19 virus. It is submitted by the learned APP

appearing for the State that the number of convicts / under-trial prisoners in the said prison are not more than its capacity and there is no overcrowding as such. There is an apprehension expressed that by the Respondent – Superintendent of Jail, Nashik Road Central Prison, in the impugned order dated 26th June, 2021 that, as per Rule 4(10) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959, in case the petitioner is released on parole, there is every possibility of him absconding Rule 4(10) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules, 1959 reads as under:

“4. Eligibility for furlough: - All Indian prisoners except from following categories whose annual conduct reports are good shall be eligible for furlough: -

...

(10) Prisoners who have at any time escaped or attempted to escape from lawful custody or have defaulted in any way in surrendering themselves at the appropriate time after release on parole or furlough;”

9. It is not in dispute that the petitioner tried to escape from the lawful custody and for the said offence, the petitioner was sentenced to undergo six months imprisonment. Keeping in view rule 4(10) of the said Rules, the petitioner is not entitled to the reliefs claimed in the petition.

10. We concur with the said reasoning given by the Respondent – Superintendent of Jail in the impugned order.

11. In that view of the matter, we are unable to persuade ourselves to grant any relief to the petitioner. No case is made out. The petition stands rejected.

12. Rule discharged. The Writ Petition stands disposed of accordingly.

(N.J. JAMADAR, J.)

(S.S. SHINDE, J.)