

(911) cri.wp-3128.21-II.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3128 OF 2021

Taya Machhindra Lokhande]
Age 49 years, Occu : Nil]
R/o : Yerwada Open District]
Central Prison Pune at Pune At]
presently lodged in Yerwada Open]
District Central Prison, Pune].... Petitioner.

Versus

1] The State of Maharashtra]
]]
2] The Superintendent of Jail]
Yerwada Open Dist. Central Prison]..... Respondents.

Mr. Aniket Vagal for the Petitioner.
Mrs. S D Shinde, APP for the Respondent/State.

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

DATE : 28th September 2021

ORAL JUDGMENT : [PER N. J. JAMADAR, 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 relief of modification of the order dated 20th May 2021 passed by the Respondent No.1-Authority, whereby the Petitioner has been directed to be released on Covid-19 Emergency Parole subject to deposit of cash security in the sum of Rs.10,000/-,

in addition to a personal bond in the sum of Rs.10,000/- and two sureties in the sum of Rs.20,000/- each.

3 The Petitioner asserts that on account of long period of incarceration and poor financial position, the Petitioner is not in a position to make arrangement of cash deposit of Rs.10,000/-, and resultantly, the purpose of the order of releasing the Petitioner on Covid-19 Emergency Parole is frustrated. Hence the Petitioner prays that he may be released on furnishing a personal bond and two sureties, and the condition of cash deposit may be dispensed with.

4 Heard Mr. Aniket Vagal, the learned counsel appearing for the Petitioner and Mrs. S D Shinde, the learned APP appearing for the Respondents/State.

5 The learned counsel appearing for the Petitioner submits that initially the Prison Authorities were not imposing the condition of cash deposit. In a given case, the said condition operates onerously and frustrates the very purpose of order of releasing the Petitioner on Covid-19 Emergency Parole.

6 The learned APP appearing for the Respondents/State, on the other hand, submits that insistence of deposit of cash security is to ensure that

a prisoner returns back to the prison, on time.

7 We have considered the submissions of the learned counsel for the parties.

8 The Respondent No.2-Authority, by the impugned order, has imposed the condition of cash deposit, personal bond and two sureties. In our view, the Respondent No.2 ought to have considered the position of the Petitioner while imposing the said condition as long period of incarceration must have had its own consequence. Undoubtedly, it is for the competent authority to impose appropriate conditions which it finds suitable in the facts of the given case. However, the factors which bear upon the ability of the prisoner to comply with those conditions cannot be lost sight of. If very onerous conditions are imposed, the very purpose of release order would be frustrated.

9 Mr. Anitket Vagal, the learned counsel for the Petitioner, submits that the grievance of the Petitioner would be redressed in case the Respondent No.2 – Authority is directed to reconsider the aspect of imposition of condition furnishing cash security.

10 We find the submission of the learned counsel for the Petitioner

reasonable. In our view, it would be appropriate if the Respondent No.2 – Authority reconsiders the aspect of imposition of condition of cash deposit in the light of the fact that the Petitioner has been incarcerated since long, his financial position and attendant circumstances.

11 We, therefore, grant liberty to the Petitioner to make an application before the Respondent No.2 – Authority with a prayer to dispense with or modify the condition of cash deposit of Rs.10,000/-. In the event, such an application is made by the Petitioner, the Respondent No.2-Authority shall consider the same in accordance with law keeping in view the aforesaid observations.

12 Subject to the aforesaid clarification, the Writ Petition stands disposed of. Rule is made absolute in the above terms.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]