

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2344 OF 2021

Supudu @ Subhash Abhiman More Petitioner

versus

The State of Maharashtra Respondent

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- Mr.Subir Sarkar, Advocate appointed through Legal Aid for Petitioner.
- Ms.M. H. Mhatre, APP for State/Respondent.

CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, J.

DATE : 2 DECEMBER 2021

P.C. :

. Heard learned counsel for the Petitioner and the learned APP.

2. The Petitioner is aggrieved by the order dated 28 September 2020 refusing his application to be released on emergency (Covid-19) parole. Thereafter another order is passed on 24 June 2021 copy of which is placed on record by learned APP. By this order, the Petitioner is granted emergency (Covid-19) parole on

certain conditions. One of the condition is security of Rs.50,000/- and surety of a Government Servant.

3. The learned counsel for the Petitioner submits that both these conditions are oppressive and also not held to be valid and therefore even though the Petitioner is granted emergency (Covid-19) parole by subsequent order, he is unable to avail of the same. The learned counsel for the Petitioner has placed on record copy of the order passed in Criminal Writ Petition No.2979 of 2021 dated 18 November 2021. The learned counsel submits that the facts in the present case and in Criminal Writ Petition No.2979 of 2021 are identical and the same order be passed in the present matter.

4. The order passed in Criminal Writ Petition No.2979 of 2021 dated 18 November 2021 reads thus;

“ The Petitioner has challenged the rejection of his application for grant of Emergency (Covid-19) Parole.

2. The reason given in the impugned order is that the Petitioner was not granted parole or furlough leave earlier. This ground is unsustainable in view of the view taken by this Court as referred to in the case of Roshan Ali Din Mohmed Mukhiya Shaikh vs. State of Maharashtra¹. The learned APP has placed on record subsequent order dated 8 July 2021 granting the application of the Petitioner on certain conditions. In Clause 5 thereof the

1 Cri.W.P. No.2115 of 2021 and Ors. dtd. 28 October 2021

conditions that are stipulated include cash surety of Rs.50,000/- and surety of the Government Officer.

3. *We would have disposed of the Petition in view of the subsequent order, however, the condition regarding surety by the Government Officer is held to be not legal by this Court as referred to in the case of Morsingh @ Pintu Sonu Pawar vs. State of Maharashtra and Ors.². This condition in that order was substituted by surety of a family member, friend or relative in addition to the one already stipulated. Therefore, the condition of grant of surety of a Government Servant in the order dated 8 July 2021 will have to be set aside and substituted and is accordingly substituted to the surety of friend, relative or family member of the Petitioner of Rs.20,000/- in addition to the surety of the relative already stipulated.*

4. *As regard the cash surety of Rs.50,000/- is concerned, since we find it on the higher side in the facts of the case we put a query to the learned APP that why such amount is imposed, we are informed that the same is imposed because the Petitioner was not granted parole or furlough leave earlier. Once such a distinction is not being found to be valid, we find no reason why the Petitioner should be subjected to a higher cash surety resulting the Petitioner not able to avail of the emergency parole. The learned Counsel for the Petitioner submitted that considering the financial position, the Petitioner is unable to furnish the cash surety of Rs.50,000/-.*

5. *Accordingly, this condition of furnishing of cash surety of Rs.50,000/- in the order dated 8 July 2021 is substituted with Rs.15,000/-. Rest of*

the conditions in the order dated 8 July 2021 are maintained.

6. Clarifying and modifying order dated 8 July 2021 which is taken on record, the Writ Petition is disposed of.”

5. It is clear that the contention of the learned counsel for the Petitioner that the facts in both the cases are identical is correct as can be seen from the record. There is no reason why similar view should not be taken in the present case. Accordingly the following order:

ORDER

- (a) The condition of releasing the Petitioner on cash security in the order dated 24 June 2021 is substituted with Rs.15,000/-.
- (b) The condition of surety of a Government Servant, is substituted by surety of friend, relative or family member of the Petitioner of Rs.20,000/-.
- (c) Rest of the conditions in the order dated 24 June 2021 are maintained.

6. Clarifying and modifying order dated 24 June 2021, the Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)