

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

CRIMINAL WRIT PETITION NO.78 OF 2021

Abhijit s/o. Baban Pawar

... Petitioner

Vs.

State of Maharashtra & others

... Respondents

Mr.S.B. Talekar i/b Talekar & Associates for the Petitioner

Mr.J.P. Yagnik, APP, for Respondent – State

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

DATED: APRIL 22, 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. Heard Mr.Talekar, learned Counsel appearing for the petitioner and Mr.Yagnik, the learned APP appearing for the Respondent – State. Mr.Talekar invites our attention to exhibit 'L' (page 171) of the compilation of the Writ Petition and submits that the application filed by the petitioner to release him on Covid-19 parole has been rejected on legally unsustainable grounds. It is

submitted that merely because the petitioner was not earlier released once or twice on furlough or parole, the prayer of the petitioner for releasing him on Covid-19 parole should not have been rejected. In support of his submission, he relies on the judgment of this Court in the case of Writ Petition-ASDB-LD-VC No. 65 of 2020 (Milind Ashok Patil & Ors. Vs. State of Maharashtra & Ors.).

3. On the other hand, the learned APP submits that in case the petitioner files a fresh application, the respondent authorities will consider the same on its own merits.

4. In the light of the submissions made by the learned Counsel appearing for the petitioner and the learned APP and keeping in view the fast spread of Covid-19 virus, we are inclined to allow this petition partly so as to enable respondent No.3 to consider the prayer of the petitioner afresh for releasing him on Covid-19 Parole. Upon a careful perusal of the impugned order, it appears that the application of the petitioner was rejected on the ground that the petitioner was not earlier released once / twice. The said ground is not sustainable in view of the exposition of law in the case dealt with by the Bombay High Court at its Aurangabd Bench

in the case of **Kavita w/o. Dilip Baviskar vs. The State of Maharashtra**¹ (Coram: T.V. Nalawade & Shrikant D. Kulkarni, JJ.), wherein a view is taken that merely because the petitioner was released once and not twice in the past on parole/furlough, it cannot be a ground for rejecting the application for emergency parole.

5. For the reasons aforesaid, the petition is partly allowed in terms of prayer clause (a). The impugned order dated 25th January, 2021 (Exhibit 'L') passed by Respondent No.3 is quashed and set aside. The petitioner to file a fresh application within one week from today. Upon filing of such an application, Respondent No.3 shall consider the said application as expeditiously as possible, however, within three weeks from the date of filing such application in accordance with Prisons (Bombay Furlough and Parole) Rules, 1959 and communicate the decision thereon to the petitioner within the same period. All the contentions raised on merits in the petition are kept open to be agitated before the said authority. The said authority shall not mechanically reject the application on the same grounds which are mentioned in the impugned order. While considering the prayer of

1 CRIMINAL WRIT PETITION NO.571 OF 2020 decided on 30th June, 2020

the applicant, the authority shall keep in view the present conditions in jail, the fast spread of the Covid-19 virus and then take a decision on such application.

9. Rule is partly made absolute to above extent. The writ petition stands disposed of accordingly.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)