

JPP

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

CRIMINAL WRIT PETITION NO. 2979 OF 2021

Devchand Dharma Waghmare

... Petitioner

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. M.S. Mulla i/b. Manas Gawankar, appointed through Legal Aid Panel for the Petitioner

Mr. J.P. Yagnik, APP for the Respondent - State

***CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, JJ.***

DATE : 18 NOVEMBER 2021

P.C. :-

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 Maharashtra*¹. 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 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

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

2 Cri.W.P. No.3922 of 2021 dtd. 15 November 2021

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.

SARANG V. KOTWAL, J.

NITIN JAMDAR, J.

**JYOTI
PRAKASH
PAWAR**

Digitally signed by
JYOTI PRAKASH
PAWAR
Date: 2021.11.26
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