

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 242 OF 2021

Sher Sing s/o Nanak Singh Gill (C-7983)
Aged: 34 years, Occ: Nil,
R/o. At present lodges in Nashik Central Jail,
Now Permanent address: Gurudwara Gate No. 5,
Shahidpura, Babadeep Singh, Sheheda
Harcharan Kamal Niwas, Nanded,
Tq. & Dist. Nanded.

...PETITIONER

Versus

1. State of Maharashtra
Through Home Department,
Mantralaya, Mumbai.
2. The Deputy Inspector General
Prison Central Division, Aurangabad.
3. The Superintendent of Jail
Central Prison, Nanded Central Prison,
Tq. & Dist. Nanded.
4. The Superintendent of Jail, Central Prison,
Nashik Road, Central Prison,
Tq. & Dist. Nashik.

...RESPONDENTS

...

APPEARANCES:

Mr. Prashant M. Nagargoje, Advocate for Petitioner.

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

...

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

RESERVED ON: 7th APRIL 2021.
PRONOUNCED ON: 20th APRIL, 2021.

JUDGMENT [PER S.S. SHINDE, J.]

. Rule. Rule made returnable forthwith and heard with the consent of learned counsel appearing for the parties.

2. The Petitioner has filed this petition for following substantive prayer:-

A. This Hon'ble Court by exercising extra ordinary powers may kindly quash and set aside order dated 10.08.2020 (Annexure-A) passed by the Respondent No. 3 Superintendent of Central Jail, Nanded and petitioner may kindly be released on emergency parole for 45 days, in view of Government Circular dated 08.05.2020 issued under Rule 19(1)(c) of the Maharashtra Prisons (Mumbai Furlough and Parole) Rules of 1959.

3. The Petitioner herein (C-7983) is convicted for the offence punishable under Section 302 for life imprisonment and fine of Rs. 1500/-, (in case fine is not deposited 3 months further imprisonment), in Sessions Case No. 38 of 2006 by Sessions Court, Nanded, decided on 30.10.2009. He is also convicted for offences punishable under Sections 4 and 25 of the Arms Act, for 6 months imprisonment.

4. Learned counsel appearing for the Petitioner submits that, merely because the petitioner who is convict was earlier reported late is not

a ground to reject his prayer for emergency (Covid-19) parole. It is submitted that the Petitioner had filed Writ Petition No. 632 of 2020 which was decided on 16.03.2020, wherein the High Court observed that merely because the convict has surrendered late cannot be a reason for rejecting the prayer for release on furlough or parole. The Petitioner is in jail for last 12 years and his conduct through out the said period is satisfactory. Therefore, learned counsel appearing for the Petitioner submits that the petition may be allowed.

5. On the other hand, learned APP appearing for Respondent-State submits that when the petitioner was released on furlough on 19.11.2010, he reported late by 855 days and therefore, in view of amended Rule 19 (1) (C) and Sub Section 2 of the Notification dated 08.05.2020 issued by the Government of Maharashtra, Home Department, such convict is not entitled to be released on emergency (Covid-19) parole. The Petitioner filed Criminal Writ Petition No. 1088 of 2020 before the Bombay High Court, bench at Aurangabad and the said petition was heard and disposed of by the Division Bench (Coram:- T.V. Nalawade & M.G. Sewlikar, JJ.) on 06.10.2020, thereby rejecting the prayer of the petitioner to release him on emergency (Covid-19) parole. It is submitted that the capacity to accommodate the convicts in Nashik Central Prison is to the extend of 3118. By end of March 2021, there were 2664 convicts (72- women convicts and 2436 men convicts). It is

submitted that in the Nashik Central Prison 682 more convicts can be accommodated. In order to prevent spread of Covid-19 virus, inmates/convicts who have been recently lodged in the said prison are kept in isolation hall and after necessary health checkup, Covid-19 test, they are accordingly kept in the prison. There is thermal scanning and rapid antigen tests are conducted on regular basis. In case, anybody is tested positive one separate isolation room No. 8 is maintained/and kept vacant for their stay and treatment. It is submitted that, in case the Petitioner is released on emergency (Covid-19) parole, he is likely to abscond. Therefore, learned APP submits that the petition may be rejected.

6. We have given due consideration to the submissions of learned counsel appearing for the petitioner and learned APP appearing for Respondent-State. With the able assistance of learned counsel for the Petitioner and learned APP, we have perused pleadings and grounds taken in the petition, annexures thereto and report received from the Superintendent of Nashik Central Prison. From perusal of order dated 06.08.2013, it appears that the name of the Petitioner had been removed from remission register, since, he over stayed for 855 days, when he was released on 19.11.2010 for 14 days furlough. The Petitioner had filed Writ Petition No. 1088 of 2020 before the Bombay High Court, bench at Aurangabad and the said petition was decided by the Division Bench (Coram:- T.V. Nalawade &

M.G. Sewlikar, JJ.) on 06.10.2020. It is noted by the Court that the petitioner's application dated 10.08.2020 was rejected by the jail authority on the ground that when the petitioner was released earlier on furlough in the year 2010, he surrendered late by 855 days, though there is a condition that the prisoner himself should return in the jail in time when released on furlough or parole. However, it appears that since the petitioner is lodged in Nashik Central Jail, the Court observed that the said bench has no territorial jurisdiction to entertain the prayer of the Petitioner.

It appears that the petitioner had also filed Writ Petition No. 632 of 2020 before the Principal Seat. The said writ petition was decided on 16.03.2020 by the Division Bench (Coram:- R.K.Deshpande & Prithviraj K.Chavan, JJ.), thereby releasing the petitioner on furlough leave for 14 days.

7. Keeping in view the reasons assigned in the impugned order that when the petitioner was earlier released on furlough for 14 days in the year 2010, he surrendered late by 855 days. The number of inmates/convicts in Nashik Central Prison are less in number than the capacity of the prison. The prison authorities are taking proper care of the convicts to avoid contracting Covid-19 virus. We are of the opinion that, time being there is no pressing need to release the petitioner on emergency (Covid-19) parole.

8. In that view of the matter, the prayer of the petitioner to release him on emergency (Covid-19) parole stands rejected. However, the petitioner would be at liberty to apply afresh for furlough or parole as the case may be, as per legal entitlement, however, after six months from today.

9. Rule discharged. The writ petition stands rejected accordingly.

(MANISH PITALE, J.)

(S. S. SHINDE, J.)