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S. Sherla

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

CRIMINAL WRIT PETITION NO.192 OF 2021

Devidas Bhimrao Borase

... Petitioner

Vs.

State of Maharashtra & another

... Respondents

Mr.Aniket Vagal for the Petitioner

Mr.Deepak Thakare, Public Prosecutor, for Respondent – State

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

JUDGMENT RESERVED ON: FEBRUARY 11, 2021

JUDGMENT DELIVERED ON: FEBRUARY 16, 2021

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. The Petitioner had applied for grant of emergency Covid-19 parole for 45 days in view of the Covid-19 pandemic and the amendment in the Prisons (Bombay Furlough and Parole) Rules, 1959. However, his application was rejected vide order dated 4th June, 2020 passed by Respondent No.2 – Superintendent of Jail, Nashik Road Central Prison, District Nashik, on the ground that the petitioner, in the past, during his stay in the jail, had not availed of parole or furlough leave even once. The petitioner is a convict

undergoing sentence of life imprisonment. The petitioner has been in jail since last 10 years.

3. Mr.Vagal, learned Counsel appearing for the petitioner, relied upon the judgments of this Court in **Kalyan s/o. Bansidharrao Renge vs. The State of Maharashtra & another (Criminal Writ Petition No.ASDB-LDVC-265 of 2020)** and **Uzair @ Hujer s/o. Rafiq Shaikh vs. The State of Maharashtra & Others (Criminal Writ Petition No.2989 of 2020)** to contend that the ground stated in the impugned order was wholly unsustainable. It was, therefore, submitted that the Writ Petition deserves to be allowed.

4. On the other hand, the learned Public Prosecutor appearing for the State, opposed the petition for grant of emergency Covid-19 parole. It was submitted that the petitioner was released once on 4.2.2016, however, he had to be arrested and brought to jail after a delay of 158 days. Further, it was submitted that now the situation in Nashik Road Central Prison, District Nashik, has changed substantially. It was submitted that the number of inmates in the said prison are less than the capacity. It was submitted that there is no crowd in the jail and that the authorities

have sufficient infrastructure now to immediately take care of any inmate or staff, who may suffer from Covid-19 virus.

5. We have perused the record forwarded by the respondents to the office of the Public Prosecutor of this Court. The facts and figures stated therein indicate that in pursuance of release of number of inmates due to Covid-19 pandemic, now the situation in the Nashik Road Central Prison, District Nashik, has changed substantially. There can be no doubt about the fact that the petitioner is justified in relying upon the aforesaid judgments of this Court to claim that the reason assigned in the impugned order is unsustainable. However, considering the fact that the petitioner was released once on 4.2.2016 and he had to be arrested and brought to jail after a delay of 158 days, we are not inclined to grant his prayer for release on emergency Covid-19 parole.

6. In view of the above, the Writ Petition is rejected.

7. Rule is discharged and the Writ Petition stands disposed of accordingly.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)