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

CRIMINAL WRIT PETITION NO.173 OF 2021

Datta Kisan Gaikwad

... 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 19th May, 2020 passed by Respondent No.2 – Superintendent of Jail,

Yerwada Open District Prison, on the ground that the petitioner, in the past, during his stay in the jail, had not availed of parole or fulough 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 now the situation in the Yerwada Open Prison, District Pune 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. On this basis, it was submitted that the petitioner could be permitted to apply afresh for grant of emergency Covid-19 parole.

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 Yerwada Open Prison 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. We are in agreement with the said contention raised on behalf of the petitioner and find that the impugned order cannot be sustained.

6. But at the same time, the fact situation on ground as on today, cannot be ignored and, therefore, there is substance in the contention raised on behalf of the learned APP that the request of the petitioner for grant of emergency Covid-19 parole needs to be considered afresh.

7. In that view of the matter, the Writ Petition is partly allowed. The impugned order is quashed and set aside. The petitioner is granted liberty to apply afresh for grant of emergency Covid-19 parole within one week from today. Upon filing such an application, the respondent No.2 shall decide the same on its own merits, as expeditiously as possible, however, within two weeks from the date of such filing of the application in accordance with the Prisons (Bombay Furlough and Parole) Rules, 1959 and keeping in view the factors like the extent of spread of Covid-19 virus and conditions in jail.

8. Rule is made absolute to the above extent. The Writ Petition stands disposed of accordingly.

(MANISH PITALE, J.)

(S.S. SHINDE, J.)