

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.238 OF 2021

Avinash Rajan Ambekar	]	
R/o Room No.3, Mira Nagar Chawl,	]	
Shabana Compound, Gokuldham	]	
Market, Malad (East), Mumbai	]	
Presently lodged at Arthur Road Jail as	]	
a convicted prisoner)	]	.. Petitioner

VERSUS

1. The Deputy Inspector General of	]	
Prisons,	]	
Eastern Region, Nashik	]	
	]	
2. The Jail Superintendent,	]	
Nashik Central Prison, Nashik,	]	
	]	
3. The State of Maharashtra	]	
Through its Chief Secretary,	]	
Ministry of Home Affairs,	]	
Mantralay, Mumbai 400032	]	
(To be served through APP, High Court,	]	
Bombay)	]	.. Respondents

Mr.Amrish R. Salunke for the Petitioner.

Mrs.S.D.Shinde, APP for the Respondent/State.

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

RESERVED ON : 15th FEBRUARY, 2021
PRONOUNCED ON : 23rd FEBRUARY, 2021

JUDGMENT (PER MANISH PITALE, J.)

1. Rule. Rule made returnable forthwith. With the consent of learned counsel appearing for the parties, heard finally.
2. By this writ petition, the petitioner has challenged the order dated 18th September, 2020 passed by respondent No.2. The only ground on which the application was rejected was that the petitioner had availed of furlough leave only once earlier.
3. The petitioner in the present case was convicted under Sections 302, 341 read with 34 of the Indian Penal Code by judgment and order dated 11th September, 2019 passed by the Sessions Court, Greater Bombay and he was sentenced to suffer imprisonment for life.
4. As noted above, the application filed by the petitioner for grant of emergency Covid-19 parole in view of the amendment in the Prisons (Bombay Furlough and Parole) Rules, 1959, stood rejected only on the ground that he had availed of furlough leave only once earlier.
5. Mr.Salunke, learned counsel appeared for the petitioner and submitted that the ground on which, the application was rejected was wholly unsustainable. It was submitted that proper interpretation of the amended Rules would show that the application could not have been rejected only because the petitioner had availed of furlough leave, only once earlier. It was further submitted that the petitioner had indeed surrendered within time, upon availing of the said furlough leave and that therefore, it was evident that the application of the petitioner was not considered on merits by

respondent No.2. On this basis, it was submitted that the writ petition deserved to be allowed and the direction ought to be given for the release of the petitioner on emergency Covid-19 parole.

6. On the other hand, Mrs.Shinde, learned APP appeared on behalf of the respondent/State and opposed the grant of emergency Covid-19 parole. It was submitted that now the situation in the Nashik Road Central Prison, Nashik had 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 had sufficient infrastructure now to immediately take care of any inmate or staff, who may suffers 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.

7. We have considered the rival submissions. The contention raised on behalf of the petitioner deserves to be accepted for the reason that this Court in the case of ***Kalyan s/o Bansidharrao Renge Vs. The State of Maharashtra & Anr.*** (Criminal Writ Petition No.ASDB-LD-VC 265 OF 2020) and ***Uzair @ Hujer S/o Rafiq Shaikh Vs. The State of Maharashtra & Ors.*** (Criminal Writ Petition No.2989 of 2020) has already held that emergency Covid-19 parole cannot be rejected only for the reason that the convict has availed of furlough/parole leave only once earlier. To that extent, the writ petition deserves to be allowed. But, at the same time, we cannot ignore the ground situation as highlighted by the learned APP. The report on which, learned APP has placed reliance, shows that the number of inmates in Nashik Road Central Prison is now much less than the

authorised capacity, indicating that there is no overcrowding. It is specifically pointed out that none of the inmates in the said prison is suffering from Covid-19 infection and that there are regular rapid antigen tests being undertaken. In this situation, we are of the view that the present writ petition can only be partly allowed.

8. In view of the above, 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. In case, such an application is submitted by the petitioner, respondent No.2 shall dispose of the same, within two weeks of submission of such application, in the light of the circumstances prevailing as on today and in terms of the Prisons (Bombay Furlough and Parole) Rules, 1959 .

9. The writ petition is disposed of in the above terms. Rule is discharged accordingly.

(MANISH PITALE, J.)

(S.S.SHINDE, J.)