

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.348 OF 2021

Mandira
Salgaonkar

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Anil Jagannath Yadav,	]	
Row House No.03, Sai Row House,	]	
Upendra Nagar, CIDCO, Nashik,	]	
(Presently lodged in Nashik Road	]	
Central Prison)	]	.. Petitioner

VERSUS

The State of Maharashtra	]	
Through the Superintendent of Jail,	]	
(Nashik Road Central Prison, Jail Road,	]	
Nashik 422 101)	]	.. Respondent
	]	

Mr.Bharat K. Manghani for the Petitioner.

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

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

RESERVED ON : 02ND FEBRUARY, 2021
PRONOUNCED ON : 10TH 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 28th September, 2020 passed by the respondent whereby his application for grant of emergency covid parole for a period of 45 days was rejected.

3. The petitioner is a convict undergoing sentence of life imprisonment for having committed offence under Sections 302, 307 read with Section 34 of the Indian Penal Code. An appeal filed by the petitioner against his conviction and sentence is pending before this Court. The petitioner had been in jail since the date of his conviction i.e. 3rd March, 2017.

4. In view of the Covid-19 pandemic and the amendment in the Prisons (Bombay Furlough and Parole) Rules, 1959, the petitioner applied for grant of emergency Covid-19 parole. The application was rejected by the aforesaid impugned order only on the ground that the petitioner had not availed of furlough leave, even once in past.

5. Mr.Manghani, learned counsel for the petitioner, relied upon the judgment of this Court in case of ***Kalyan s/o Bansidharrao Renge Vs. The State of Maharashta & 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) to contend that the only ground stated in the impugned order was wholly unsustainable. It was submitted that therefore, the writ petition deserved to be allowed.

6. On the other hand, Mrs.Shinde, learned APP appeared on behalf of the respondent 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 perused the record forwarded by the respondent to the office of the Public Prosecutor of this Court. Facts and figures have been stated therein indicating that in pursuance of release of number of inmates due to Covid-19 pandemic, now situation in the Nashik Road Central Prison had 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 only 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.

8. 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.

9. 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, the respondent 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 .

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

(MANISH PITALE, J.)

(S.S.SHINDE, J.)