

JPP

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

CRIMINAL WRIT PETITION NO. 3399 OF 2021

Akshay Deepak Chavariya

... Petitioner

V/s.

The State of Maharashtra

... Respondent

Mr. Aniket Vagal for the Petitioner

Ms. A.S. Pai, PP for the Respondent - State

***CORAM : NITIN JAMDAR &
SARANG V. KOTWAL, JJ.***

DATE : 25 OCTOBER 2021

P.C. :-

Heard the learned Counsel for the Petitioner and the learned Public Prosecutor.

2. This Petitioner, challenges the order passed by the Respondent No.2 dated 1 June 2021, rejecting the application of the Petitioner for Emergency Parole of 45 days. The Petitioner prays that the Petitioner be released on Covid Emergency Parole for 45 days.

3. The Petitioner is undergoing the sentence of imprisonment under Section 302 of the Indian Penal Code at Nasik Road Central Prison. The Petitioner was once released on furlough leave on 29 January 2020, he was to surrender on 21 April 2020 and after seeking extension from this Court, surrendered on 13 May 2020. The Petitioner was then directed to be released on Covid Emergency Parole by this Court on 21 December 2020. The parole was extended. On 3 March 2021, an offence was registered at Upnagar Police Station under Section 384, 452, 336, 337, 427, 323, 504 and 34 of the Indian Penal Code, wherein the Petitioner was named as one of the accused. The Petitioner was directed to surrender which he did on 23 March 2021. Thereafter, the Petitioner made an application for Emergency Covid Parole which has been rejected by the impugned order. The impugned order gives reasons. Firstly that the rate of Covid infection of the concerned jail have come down. Secondly, that when the Petitioner was released on parole, his conduct was not satisfactory and has engaged in anti-social activity. Reference is made in the impugned order to FIR 38 of 2021 lodged at Upnagar Police Station, Nasik.

4. The learned Counsel for the Petitioner submitted that there is no role attributed to the Petitioner in the FIR 38 of 2021 and the Petitioner is only named therein. The learned Counsel also submitted that the Petitioner was given Anticipatory Bail by the Sessions Judge, Nasik and an affidavit was filed by the Informant in

the C.R.No.38 of 2021 that the Petitioner was not concerned with this crime and the complainant does not know the Petitioner. The learned Counsel submits that therefore, the reasons for not releasing the Petitioner are not germane and considering that the Covid Emergency Parole is still available, the Petitioner be directed to be released for 45 days as prayed. The learned P.P. has opposed the Petition.

5. Apart from the rate of infection in the jail, the conduct of the Petitioner and the chances of misusing the liberty is also one of the criteria which is also needs to be kept in mind. It is not that the FIR of 3 March 2021 does not name the Petitioner at all. It is the contention of the Respondent – State that though the direct role is not attributed to the Petitioner, the Petitioner is acting through the others and creating law and order situation. We find merit in this assertion by the very reason of the Informant filing an affidavit favouring the Petitioner more particularly when he says that he does not even know the Petitioner. This gives rise to a question as to why the Informant would go out of the way to file an affidavit seeking to exonerate the Petitioner. The Petitioner argued that nothing is shown that the Petitioner was instrumental in getting the affidavit and it was executed on its own violation by the Informant. It is not acceptable as the Petitioner is the clear beneficiary thereof. These facts lend credence to assertion of the State that the Petitioner has managed to secure the affidavit by coercion. The apprehension of

the Authorities that the Petitioner will misuse his liberty if released on Emergency Parole as sought for cannot be said to be unwarranted, or an arbitrary exercise of power.

6. The Petition is rejected.

SARANG V. KOTWAL, J.

NITIN JAMDAR, J.

JYOTI
PRAKASH
PAWAR

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by JYOTI
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Date: 2021.10.30
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