

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.3203 OF 2021

Rakesh Ramsamuj Rai
(Brother of Petitioner Brijesh Rai) ...Petitioner
vs.
The State of Maharashtra ...Respondent

Mr. Rupesh Jaiswal, for the Petitioner
Mrs. A.S. Pai, PP for the Respondent-State.

CORAM : S. S. SHINDE &
N. J. JAMADAR, JJ.

DATE : SEPTEMBER 14, 2021

P.C.:

. This petition is filed seeking direction to the respondent with
the following prayer:

*(b) By writ of mandamus or any other appropriate writ,
order of directions in the like nature to modify the order of
respondent dated 9th June, 2021 (Exh.A) and further
direct the respondent to release the petitioner's brother
(Brijesh Ramsamuj Rai, Convict No. 12575, confined in
Nasik Road Central Prison) on Emergency Parole leave on
furnishing two sureties (not being government servant) .*

2. Mr. Jaiswal, learned counsel for the petitioner submits that
the Superintendent, Nasik Central Prison, Nasik has allowed the
prayer of the petitioner to release him on Covid-19 Emergency
Parole, however, while allowing the said prayer imposed a
condition of furnishing surety who is a Government servant. It is

submitted that the said condition is onerous and it may not be possible for the brother of the petitioner i.e. convict to furnish surety.

3. Mr. Jaiswal submitted that the convict would furnish an independent surety. However, it would be difficult to furnish a surety who happens to be a Government servant.

4. The learned counsel for the petitioner placed reliance upon the order of this Court dated 11th August, 2021 passed in **Writ Petition No. 2667 of 2021 (Sunilkumar Adikal Mandal vs. State of Maharashtra)** and submitted that in similar set of facts, this Court allowed the prayer of the petitioner therein and directed that upon the petitioner complying with the rest of the conditions, the petitioner be released on furnishing a surety who is a family member, friend or relative having good conduct, instead of a government servant.

5. Mr. Saste, the learned APP vehemently opposed the said prayer and submitted that the procedure is provided for furnishing such Government surety.

6. This Court in the similar facts and situation in the case of **Sunilkumar** (supra) in paragraph Nos. 6 to 10 held as under:

6] It is pertinent to note that Rule 24A has since been substituted by notification dated 14th April, 2018. In any event, if the said notification is considered as a guideline, the aforesaid prescription does not provide that the surety must be a government servant. Sureties can be from any of the four categories.

7] In this view of the matter, the purpose for which the surety is insisted upon would be served if an option as given to the petitioner to furnish a surety who satisfied the qualification provided in category Nos. 3 and 4 i.e. (iii) Family members having good conduct (iv) Friends and relatives having good conduct.

8] In our view, insistence on furnishing a surety who is a government servant may, in a given case, frustrate the very object of directing the release of the prisoner on emergency parole. Such a condition operates onerously.

9] Thus, the petition deserves to be allowed by modifying the Condition No. 5 to the aforesaid extent.

10] Upon the Petitioner complying with the rest of the conditions, the petitioner released on furnishing a surety who is a family member, friend or relative having good conduct, instead of a government servant.

7. In the facts of this case, we are of the opinion that the insistence of the respondent to furnish a surety who is a Government servant may not be justifiable. The purpose would be served if out of two sureties, convict furnishes an independent surety and another who is a family member, friend or relative having good conduct.

8. The respondent is thus directed to release the petitioner on

Covid 19 emergency parole on furnishing two sureties, one of whom is an independent person and another who is a family member, friend or relative having good conduct, instead of a surety who is a government servant.

9. Petition stands disposed of accordingly.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)