

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3230 OF 2021

Sameer @ Chintya Vithoba Kadam

Age : 34 years, Occ : Nil

Resident of Hanuman Mandir Chol,

Room No.11, Near Shrimiksang,

Above Pipeline, Tembipada Road,

Bhandup (W), Mumbai 400 078.

At present in Nashik Road Central Prison...Petitioner

vs.

1. The State of Maharashtra

(To be served through the office of

Learned Public Prosecutor,

High Court, Bombay)

2. The Superintendent,

Nashik Road Central Prison,

Nashik,

...Respondents

Mr.Viral Rathod i/b Prani S. Rawade for petitioner.

Mr. K.V. Saste, APP for State.

CORAM : S. S. SHINDE &

N. J. JAMADAR, JJ.

DATE : 17th SEPTEMBER, 2021

JUDGMENT : (Per : N.J. Jamadar, J)

1. Rule. In view of the limited nature of the challenge, Rule made returnable forthwith and heard finally.

2. The petitioner, who has been ordered to be released on emergency parole, by order dated 24th June 2021, passed by respondent No.2-Superintendent, Nashik Road Central Prison, Nashik, has invoked writ jurisdiction of this Court being aggrieved by a condition imposed in the said order to the effect that one of the two sureties, to be furnished by the petitioner, shall be a government servant.

3. We have heard Mr. Rathod, the learned counsel for the petitioner and Mr. Saste, the learned APP for the State. With the assistance of the learned counsels, we have perused the material on record especially the order dated 24th June 2021, whereby the petitioner was ordered to be released on emergency parole in accordance with Rule 19(1)(C)(ii) of the Prisons (Bombay Furlough and Parole) Rules, 1959. ("the Rules, 1959"). Condition No.5 of the said order stipulates that the petitioner shall furnish cash security of Rs.50,000/- and a personal recognizance of Rs.10,000/-. In addition, the petitioner shall furnish two sureties in the sum of Rs. 20,000/- each, one of whom shall be a government servant,

and another a relative.

4. Mr. Rathod, learned counsel for the petitioner submitted that the aforesaid condition of furnishing surety, who is a government servant, is harsh and the petitioner's right to be released on parole is virtually defeated by imposing the said condition.

5. As against this, Mr. Saste, learned APP supported the impugned order. It was urged that in order to ensure that the petitioner returns to prison after completion of the period of parole leave, the respondent No.2 is justified in imposing conditions which include furnishing a solvent surety who can exercise the control over the petitioner. Mr. Saste, thus, prayed for dismissal of the petition.

6. We have given our careful consideration to the submissions advanced across the bar. The circumstances in which a prisoner finds himself after a prolonged incarceration cannot be lost sight of. The condition that the prisoner should furnish a surety, who happens to be a

government servant, where the roots of the petitioner are virtually finished on account of the conviction and incarceration needs to be kept in view. In a given situation, such a condition operates onerously.

7. There can be no duality of opinion on the point that the respondent No.2 is empowered to impose conditions which he finds suitable in the backdrop of the case. However, the purpose for which the surety is insisted upon, in our view, would be served if an option is given to the petitioner to furnish a surety, who satisfies description of being an independent person, with a standing in the society. In any event, the petitioner has to furnish another surety who is the relative of the petitioner.

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.

9. Thus, the petition deserves to be allowed by modifying

the condition No. 5 of the order dated 24th June 2021 to the aforesaid extent.

10. We are, thus, persuaded to direct that upon complying with the rest of the conditions, the petitioner be released on furnishing an independent surety and another surety who is a family member or relative, instead of a government servant.

11. The petition stands allowed in the aforesaid terms.

Rule made absolute.

All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)

(S. S. SHINDE, J.)