

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3350 OF 2021

Indarsing S/o Padkya Pawara

: Petitioner.

Versus

State of Maharashtra

: Respondent.

Mr. Rupesh Jaiswal for the Petitioner.

Mr. J P Yagnik, APP for the Respondent/State.

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

DATE : 27th September 2021

P.C.

1 Heard Mr. Jaiswal, the learned counsel appearing for the petitioner and Mr. Yagnik, the learned APP for the State.

2 Rule. Rule made returnable forthwith and heard with the consent of learned counsel for the parties.

3 The Petitioner being aggrieved by the condition No.5 of the order dated 09/06/2021 whereby he is ordered to be released on emergency Covid-19 parole. The said condition stipulates that the petitioner shall furnish cash security of Rs.20,000/- and a personal recognizance bond of Rs.10,000/-. In

addition, the Petitioner shall furnish one surety who shall be of government servant in the sum of Rs.20,000/- and one surety who shall be of his relative in the sum of Rs.20,000/-.

4 Mr. Jaiswal, the learned counsel for the petitioner submits 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 said condition.

5 On the other hand, the learned APP supports the impugned order. A copy of the notification dated 26th August, 2016 is tendered for the perusal of this Court. In Rule No.24A of the Notification, the categories of persons who can be accepted as sureties are indicated. It provides that two of the sureties shall be;

- (i) State or Central Government servant, or
- (ii) Elected office bearers or
- (iii) Family members having good conduct or
- (iv) Friends and relatives having good conduct.

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 that 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 categories Nos.3 and 4 i.e. (iii) Family Members having good conduct and (iv) 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 objection of directing the released 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 and furnishing independent solvent surety, the Petitioner be released on Emergency Covid-19 Parole. The aforesaid independent solvent surety is in lieu of furnishing surety who is a government servant. In addition, as already observed in the impugned order of the Respondent-Authority, the Petitioner to

furnish one more surety, who is his family member, friend or relative having good conduct.

11 The petition stands allowed in the aforesaid terms.

12 Rule made absolute to above extent.

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

[N. J. JAMADAR, J]

[S. S. SHINDE , J]