

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.4206 OF 2021

Nana @ Badrinath S/o. Dashrath Barela .. Petitioner
v/s.
The State of Maharashtra .. Respondent

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Mr. Rupesh Jaiswal, for the Petitioner.

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

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CORAM: NITIN JAMDAR &
SARANG V. KOTWAL JJ.

DATE : 10 DECEMBER 2021.

P.C:-

The Petitioner has filed this petition to challenge Condition No.5 of the order dated 9 June 2021 to the effect that the Petitioner is directed to furnish surety of a Government servant for grant of emergency parole. This order is passed on 9 June 2021 granting Emergency (Covid-19) Parole to the Petitioner but he continues to be in jail because of this condition.

2. This Court has taken a view in a series of decisions that this condition is not valid in law. First, in the line of decision is of the Division Bench in the case of *Kavita, W/o. Dilip Baviskar vs. State of*

*Maharashtra*¹. This position of law is reiterated in various decisions, two of which are annexed to the petition. Several petitions are disposed of by this Bench setting aside the condition of furnishing government surety for availing of Emergency (Covid-19) Parole, and substituting it with the surety of a friend or relative.

3. The object of granting emergency parole is to decongest the jails to prevent spread of pandemic. This, therefore, is an emergency measure. If the law was laid down as far back as 30 June 2020 by this Court and this decision was not challenged by the State and is being accepted in all other matters, there is no reason why the State itself does not take review of all such matters where this condition is imposed and the prisoners are in jail for lack of fulfillment of the condition to take corrective measures, without the prisoner having to come to the prison.

4. Every prisoner need not approach this Court to get this condition set aside. Repeating and mechanically passing the same orders is defeating the object of emergency parole, it also involves expenditure on the part of the State machinery, apart from such repeated stipulations being contrary to the law laid down by this Court, for which the Court may be entitled to initiate action.

5. Be that as it may, we are of the opinion that, considering

1 Criminal Writ Petition No.571 of 2020 dated 30 June, 2020

the object of the grant of Emergency (Covid-19) Parole, the State Government should by itself take a review as stated above and avoid needless litigation and further the object of grant of emergency parole.

6. As regards the present petition is concerned, the condition in the order dated 9 June 2021 that the Petitioner should give surety of a Government servant of Rs.20,000/-, is set aside and the same is substituted by surety of a relative or friend of the Petitioner in addition to the surety of the relative already provided. Rest of the order remains the same.

7. The Registry and Office of the Public Prosecutor will send the copy of the order to the Secretary (Home) so that necessary instructions can be issued in light of the observations. We expect this exercise to be done within a reasonable time, failing which the Court may be entitled to take into consideration that such orders are being passed contrary to the law laid down by this Court repeatedly and the consequences of that may ensue in law against the concerned Officers.

8. The writ petition is disposed of accordingly.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)