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

**WRIT PETITION NO. 4097 OF 2021**

Mohd. Amir Shaikh Mohd.

... Petitioner

Versus

The State of Maharashtra & Ors.

... Respondents

Mr.Aniket Vagal for the Petitioner.

Ms.A.A.Takalkar, APP for the State.

**CORAM : S.J. KATHAWALLA &  
SURENDRA P. TAVADE, JJ.**

**DATE : 3RD NOVEMBER, 2021  
(VACATION COURT)**

**P.C. :**

1. Heard the learned Advocate appearing for the Petitioner and the learned APP for the State.
2. Rule. In view of the limited nature of the challenge, Rule made returnable forthwith and heard finally.
3. By an Order dated 12<sup>th</sup> August, 2021, the Petitioner was ordered to be released on emergency parole due to Covid – 19. However, certain conditions are stipulated for his release. Condition No. 5 stipulates furnishing of cash security of Rs.30,000/- and a Personal Bond of Rs.10,000/- by the Petitioner. In addition to the above, the Petitioner is also required to furnish two sureties for Rs.20,000/- each, one

of whom shall be a Government Servant and another, a relative

4. The learned Advocate appearing for the Petitioner submits that since the Petitioner is not known to any Government Servant, the aforesaid condition of furnishing the surety of a Government Servant is harsh and that the Petitioner's right to be released on parole is virtually defeated by imposing such a condition. The learned Advocate appearing for the Petitioner states that instead of taking surety from a Government Servant, the Petitioner has two brothers, who have good conduct and are willing to give surety.

5. We have gone through the decision of this Court dated 4<sup>th</sup> August, 2021 in the case of ***Rakesh Mukhnath Sharma Vs. The State of Maharashtra & Ors.***<sup>1</sup>, wherein the Division Bench has in paragraphs 6 to 9 held as under :

“6. We must record that Rule 24A has since been substituted by notification dated 14<sup>th</sup> 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 satisfies the qualification provided in category Nos. 3 and 4 namely (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

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<sup>1</sup> Writ Petition No. 2728 of 2021

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.”

6. In view of the above, the Petition is allowed by modifying Condition No. 5 to the following extent :

- i. The Petitioner shall be released on parole on furnishing two sureties from two family members / friends having good conduct instead of a Government Servant.
- ii. The above Writ Petition is allowed in the aforesaid terms.
- iii. All other conditions of Order dated 12<sup>th</sup> August, 2021 shall be complied with by the Petitioner.
- iv. Rule made absolute.
- v. All concerned to act on an ordinary copy of this Order duly authenticated by the Associate of this court.

(SURENDRA P. TAVADE, J. )

( S.J. KATHAWALLA, J. )