

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 45 OF 2021

Sanjay s/o. Digamber Sukhdeve,
 Aged about 25 years, r/o.
 At Post Kurkheda, District
 Gadchiroli (Convict No.
 C/9655, at present at Nagpur
 Central Prison).

..... PETITIONER

// Versus //

1. The Deputy Inspector General of
 Prison, East Region, Nagpur.

2. The Superintendent of Prisons,
 Nagpur Central Prison,
 Nagpur.

..... RESPONDENTS

 Ms S.B.Khobragade, Advocate for the petitioner.
 Ms Tajwar Khan, A.P.P. for Respondent Nos. 1 and 2.

CORAM : SUNIL B. SHUKRE AND
 AVINASH G. GHAROTE, JJ.

DATE : 15.1.2021.

ORAL JUDGMENT (Per Sunil B. Shukre, J) :

1. **Rule**, made returnable forthwith. Heard finally with the consent of Ms S.B.Khobragade, learned Counsel for the petitioner and Ms Tajwar Khan, learned Additional Public Prosecutor, who waives service for respondent nos. 1 and 2.

2. The reason why we have taken up this matter for final hearing forthwith is that emergency parole has been sought by the petitioner for the purpose of his attending marriage of his brother and only one day of parole has been demanded by the petitioner. The marriage is scheduled to be solemnized on 17.1.2021 and today being the 15th day of January, 2021, it would be too late for the petitioner if no immediate hearing is granted to him.

3. On going through the impugned order, it is found that, in principle, the Authority has considered the petitioner as eligible for being released on emergency parole of one day. But, while exercising discretion in his favour, the Authority, instead of putting a condition of petitioner's visit daily to Police Station, the Authority has directed that the petitioner shall be released on one day parole under police bandobast, the expenses of which would be borne by the petitioner. According to learned Counsel for the petitioner,

imposition of such a condition is virtual denial of emergency parole to the petitioner as the total cost of police bandobast comes to Rs.1,50,000/- for one day. Since this statement has been made by the learned Counsel for the petitioner and appears to have been made with all sense of responsibility, we accept the same.

4. Now if it is to be believed that the expenses for police bandobast to be borne by the petitioner comes to about Rs.1,50,000/-, it would have to be inferred that grant of emergency parole to the petitioner is nothing but an illusion created for the petitioner and that the petitioner would not really be in a position to witness one of the joyous occasions in his family. The impugned order notes the fact that the petitioner has never been released earlier, either on parole or furlough and therefore, the conduct of petitioner, in terms of his respect for the conditions stipulated in the order of release either on parole or furlough, is yet to be tested. But, at the same time, it is seen from the impugned order that there is no adverse remark expressed therein about the conduct of the petitioner. If this is so, we are of the view that the petitioner can be considered to be released on one day's emergency parole by imposing alternative condition.

5. The alternative condition is to be found in Rule 19(1)(B) of

the The Prisons (Bombay Furlough and Parole) Rules, 1959 and it is to the effect that a prisoner can be released with a condition to report daily to the local Police Station depending upon the crime committed by him and his conduct during the stay. This condition stands as an alternative to the first condition of release under police escort, the expenses of which are to be borne by the concerned prisoner.

6. As stated by us earlier, there is nothing adverse mentioned in the impugned order about the conduct of petitioner and therefore, we take his conduct as of now as good. As regards the crime committed by the petitioner, going by sentence of imprisonment imposed upon him, which is ten years in the present case, we do not think that the petitioner could be considered to be such a hopeless prisoner as not to deserve to be reposed faith in him by the law enforcing machinery.

7. In the circumstances, we are of the opinion that the petitioner can be released on the alternative condition.

8. The petition is, therefore, allowed. The impugned order is hereby quashed and set aside only to the extent it imposes a condition of police bandobast at the cost of petitioner. Now we direct

that the petitioner be released on emergency parole for one day on 17.1.2021 on the following conditions :

- a) that the petitioner shall report to Police Station, Sakkardhara at 3.00 p.m. on 17.1.2021.
- b) the petitioner shall execute a P.R. bond of Rs.20,000/-.
- c) the petitioner shall surrender himself before the jail Authorities latest by 5.00 p.m. of 17.1.2021.

Copy of this order be supplied to the learned Counsel for the respective parties.

JUDGE

JUDGE

ssjaiswal