

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 215 OF 2022**

Sahil S/o.Laxman Kawale

....Petitioner

Versus

The State of Maharashtra

....Respondent

Mr. Rupesh Jaiswal, advocate for the petitioner.

Mr. K. V. Saste, APP for the respondent-State.

**CORAM : PRASANNA B. VARALE &
S. M. MODAK, JJ.**

DATE : 29th MARCH, 2022.

P.C. :

1. Heard Mr. Jaiswal, learned counsel for the petitioner.
2. The petitioner, who is presently lodged at Kolhapur Central Prison, Kalamba and suffering life imprisonment for offence punishable under Section 302 of the Indian Penal Code, 1860, awarded by learned Sessions Judge, Kolhapur in Sessions Case No.120 of 2014, is before this Court challenging the order dated 1st August, 2021, passed by the authority of respondent No.1-State viz. Superintendent, Kolhapur Central Prison, Kalamba, whereby the application for grant of emergency parole is rejected.

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3. Mr. Jaiswal, learned counsel for the petitioner, by inviting our attention to the order challenged in the petition and placed on record at Exhibit-'A', page 13 of the petition, submitted that the order is nothing but an outcome of non-application of mind. Mr. Jaiswal submitted that in the said order, firstly the authority refers to the arrangement made in the prison so as to deal with Covid-19 pandemic and secondly, assigns a reason that in case the petitioner is released from the prison, he may abscond. Mr. Jaiswal submitted that it is stated in the order that considering the past record of the petitioner-convict, the authority formed an opinion that if the petitioner is released, he may abscond. Mr. Jaiswal, learned counsel, submitted that prior to submitting the application to the authority, the petitioner was not released from the prison even on single occasion. Thus, the apprehension expressed by the authority is wholly unjustified. Mr. Jaiswal, in support of his submission, placed reliance on the order of this Court dated 13th May, 2021 in writ petition No.1954 of 2021, order dated 30th August, 2021 in writ petition No.2666 of 2021 and order 6th January, 2022 in writ petition No.3438 of 2021. Mr. Jaiswal submitted that the petitioner is similarly circumstanced with petitioner - Jaydeep Chavan in writ petition No.3438 of 2021.

4. An affidavit-in-reply is filed through Chandramani A. Indurkar, Superintendent, Kolhapur Central Prison, Kalamba. It is stated in the reply that the petitioner had committed a heinous crime and he was

awarded sentence of life imprisonment. Then, the arrangements being made to deal with Covid 19 pandemic are reiterated and it is stated in the affidavit-in-reply that as the petitioner-convict had committed serious crime, if he is released on emergency parole leave, there is every possibility that he would not surrender in time.

4. Considering the above referred facts, we find merit in the submission of Mr. Jaiswal, learned counsel for the petitioner. Resultantly, we pass the following order:

ORDER

- (1) The petition is partly allowed.
- (2) The order impugned in the petition dated 1st August, 2021 passed by the Superintendent, Kolhapur Central Prison, Kalamba, is quashed and set-aside.
- (3) The respondent-authority is directed to consider the application of the petitioner afresh and pass appropriate orders as early as possible and not later than two weeks from the date of receipt of the order of this Court.

The petition stands disposed of.

5. All concerned to act upon a copy of this order duly authenticated by the Registry of this Court.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)