

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

WRIT PETITION NO. 1210 OF 2022

Dastgir S/o. Sadru Desai	...Petitioner
Versus	
State of Maharashtra	...Respondent

.....

Mr. Rupesh A. Jaiswal for the Petitioner.
Mr. J.P. Yagnik, APP for the Respondent - State.
Mr. Prakash Lomate, Jailor- Group II, Kolhapur Central Prison.

.....

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

DATE : 21ST APRIL, 2022

P.C.:

1. Heard learned counsel appearing for the petitioner and learned APP.
2. Order was passed by us on 8th April, 2022, making reference to the limited grievance raised by the petitioner in this petition and the grounds raised in challenge to rejection order. The brother of petitioner, namely, Riyaz S/o. Sadru Desai, is convict No. C-7589 and presently is in Central Jail Kalamba, Kolhapur. The petitioner prayed for grant of emergency parole leave for his brother.

3. Perusal of the impugned order dated 1st August, 2021 shows that application of the petitioner's brother has been rejected on three grounds, firstly, various steps taken by the prison authority in view of Covid-19 pandemic outbreak; secondly, assigning a reason that release of brother of the petitioner would cause some disturbance to public peace; and thirdly, assigning a reason that if brother of the petitioner is released on parole leave, he may abscond by misusing the leave granted to him.

4. Mr. Jaiswal, learned counsel for the petitioner, invited our attention to the order passed by this Court in the matter of **Rohit S/o. Sudhir Kamble (who is co-convict with brother of the petitioner) Versus The State of Maharashtra** dated 29th March, 2022. It is also submitted that brother of the petitioner is placed in similar circumstance as the petitioner in Rohit S/o. Sudhir Kamble's case.

5. Perusal of the order dated 29th March, 2022 shows that nearly identical reasons were assigned for rejection and the order was supported by filing affidavit in reply in this Court. By assigning reasons, the petition was partly allowed. The

impugned order in the petition was quashed and set aside and respondent-authority was directed to consider the application of 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.

6. In the present matter, though reply is not filed, learned APP made available a chart referring to the details of brother of the petitioner.

7. Perusal of the chart shows that brother of the petitioner is in prison for 8 years 1 month and 26 days till the date of submitting the chart. It is further stated that prior to rejection of application, he was not granted parole or furlough leave on even a single occasion.

8. Considering these facts, there may not be any dispute to the first reason assigned by the prison authority. Insofar as second and third grounds assigned by the authority are concerned, there is absolutely no material to form the opinion that in case brother of the petitioner is released, he would disturb the public peace or he would abscond and would not

return back to the prison authority. Thus, only on assumption and presumption grounds, the application of brother of the petitioner was rejected. Accordingly, rejection order is unsustainable and we pass the following order :

ORDER

- (i) The petition is partly allowed;
- (ii) The order impugned in the petition dated 1st August, 2021 passed by the Superintendent, Kolhapur Central Prison, Kalamba is quashed and set aside;
- (iii) The respondent-authority is directed to consider the application of brother 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.

9. 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.)