

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

WRIT PETITION NO. 3438 OF 2021

Mr.Jaydeep s/o. Raju Chavan

...Petitioner

vs.

The State of Maharashtra

...Respondent

Mr.Rupesh Jaiswal for Petitioner.

Mr.A.S. Pai, PP for State.

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATED : 6 JANUARY 2022

P.C. :

. Heard learned Counsel, Mr.Jaiswal, appearing for the Petitioner.

2. The Petitioner is before this court challenging the order passed by the Respondent, i.e. Superintendent of Central Prison, Kalamba, Kolhapur, dated 1 August 2021 whereby the prayer of the Petitioner for Covid-19 emergency parole leave was rejected. It may not be necessary for us to refer the other facts in detail suffice it to show that the Petitioner is convict no. C-7587 suffering his sentence of life imprisonment pursuant to judgment and order passed by the learned Sessions Judge dated 6 March 2021 in Sessions Case No.120/2014. On 26 May 2021, the Petitioner submitted an application to prison authorities for his release on emergency parole leave in view of the various circulars issued by the State Government on the backdrop of Covid-19 pandemic. In the rejection order,

the prison authorities have assigned certain reasons. Reference is also made to a decision of this court in Writ Petition No.522/2021. Insofar as the observations of this court reflected in the order in Writ Petition No.522/2021, there cannot be any dispute but then the reliance for rejection is on the ground of an opinion formed by the authority that in case the Petitioner/Applicant is released on emergency parole leave, there is an apprehension that he would be absconded by misusing the liberty. Vide an order dated 10 December 2021, the Division Bench of this court was pleased to refer this peculiar ground and the order of this court reads thus :

“ The ground given for rejection of the Petitioner's Emergency (Covid-19) Parole is by referring to Rule 4(20) of the Prisons (Bombay Furlough and Parole) Rules, 1959 that in the opinion of the Police/Prison Authorities, the Petitioner is likely to abscond. We find no material on record to justify this conclusion. The learned PP states that reply affidavit of the concerned Respondent will be filed and the material will be shown to the Court. Stand over to 16 December 2021.”

3. Learned PP was fair enough to submit before this court that though there are other reasons stated in the affidavit in reply in support of the rejection order, the reply fails to mention any positive statements insofar as the opinion formed by the authority about the abscondants of the Petitioner. Thus, it can safely be said that while rejecting the application, the authority merely referred to opinion and apprehension without there being any supportive material leading to form such an opinion.

4. On this aspect only, we are of the opinion that the order impugned in the petition is unsustainable and accordingly, the petition is

partly allowed. The order dated 1 August 2021 passed by the Respondent, i.e. the Superintendent of Central Prison, Kalamba, Kolhapur, is quashed and set aside. The Respondent is further directed to pass order afresh on the application of the Petitioner, as early as possible and not later than two weeks from the date of receipt of the order of this court.

5. The petition stands disposed of accordingly.

6. Authenticated copy of this order be supplied to the Counsel appearing for the respective parties. Learned APP to forward copy of the order to the Respondent / Superintendent, Central Prison, Kalamba, Kolhapur.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)