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

WRIT PETITION NO. 322 OF 2022

Deepak Jaikishan Sharma @ Magic ...Petitioner

Versus

The State of Maharashtra & Anr ...Respondents

- Mr. Aniket Vagal for the Petitioner.
- Mrs. S.D. Shinde, APP, for the Respondent – State.

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

DATE : MARCH 31, 2022.

PER COURT :

1. A very limited grievance raised in the Petition by raising challenge to an order passed by Respondent No. 2 – Superintendent of Jail, Kolhapur Central Prison, dated 01.07.2021.

2. Petitioner is convict no. 7433 presently lodged in Kolhapur Central Prison, Kalamba suffering the punishment awarded to him vide judgment and order passed by Special MCOCA in Special Case No. 21/2014 as well as Sessions Case No. 21/2016. The Petitioner submitted an application for emergency parole leave in view of Government Resolution prevailing at the

relevant time on the backdrop of outbreak of Covid 19 pandemic. The application is rejected on 2 grounds. The ground is the change in situation namely, prompt steps taken by prison authorities to deal with the Covid 19 pandemic and all the necessary cautionary measures are made available so as to prevent the Covid virus. It is further stated in the order that the regular check ups through the medical officers are conducted. The premises in the prison is periodically sanitized. It is further stated that where the prison authorities received the positive reports of the prisoners, immediately medical treatment is provided to them and such proceedings are shifted to specialized wards. It is also stated in the order that presently the situation in prison in respect of Covid 19 is under control and none of the prisoner is reported positive at the time of passing the order by authorities.

3. Learned Counsel for the Petitioner submitted that though this reason refers to various steps taken by the authorities the another reason in the order only shows mechanical approach of the authority. The second reference is an apprehension expressed by the authority

is if the Petitioner is released, he may not surrender to prison authority and he may indulge in an act of absconding. Learned Counsel for Petitioner submitted that it is specifically stated in the order that the Petitioner is suffering his imprisonment on his admission to the prison on 11.01.2022 and in past the Petitioner had not availed the leave even for a single occasion. Learned Counsel further submitted that on the backdrop of these factual aspects the observations of the authority in the nature of apprehension is clearly unjustified.

4. We find considerable merit in the submissions of learned Counsel for Petitioner. Learned Counsel for Petitioner was justified in submitting that if the authorities were having a report that in past the Petitioner had not availed the opportunity of leave even for once, in that situation, the apprehension expressed by the prison authorities is unsustainable.

5. Accordingly, the Petition is partly allowed. The order impugned in the Petition is quashed and set aside. The Respondent No. 3 is directed to consider the application of the Petitioner afresh in view of the

observations of this Court. Such exercise of afresh decision be undertaken by the authority as expeditiously as possible.

6. With these directions, Writ Petition is disposed of.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)