

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 4199 OF 2021**

Mohammed Alam Abbas Khan	Petitioner
Versus	
The State of Maharashtra	Respondent

Mr. Ketan A. Dhavle, Advocate for the Petitioner.
Mr. J. P. Yagnik, APP for the State.
Mr. S. B. Khartode, Prison Officer Class-I, Nasik Road Central Jail,
present in the Court.

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

DATE : 26th APRIL, 2022.

P.C. :

1. Heard learned counsel appointed on behalf of the petitioner.
2. By present petition, the petitioner raises challenge to the order passed by the prison authorities on 1st December, 2020. The petitioner who is convict No. 11694 is undergoing life imprisonment in Nasik Road Central Jail applied for emergency parole leave. By citing reasons in paragraph 2 of the order viz. the petitioner being a resident of another State, the prayer for emergency parole leave was rejected. It seems that the Office of the Public Prosecutor was made aware of the petition and accordingly instructions were sought for.
3. Mr. Yagnik, learned APP invited our attention to the copy of the recent communication dated 22nd April, 2022 forwarded to the Office of

the Public Prosecutor along with the order dated 27th July, 2021 on application dated 25th June, 2021. The same is taken on record. Perusal of the documents show that post the earlier application which was rejected vide order dated 1st December, 2020, the petitioner submitted fresh application on 25th June, 2021 for grant of emergency parole leave on account of outbreak of COVID-19 pandemic. Perusal of the documents submitted before this Court further show that considering the Government Gazette Notification dated 8th May, 2020 as well as the decisions of the High Powered Committee dated 7th May, 2021 and 11th May, 2021, the application of the petitioner was allowed. A copy of the order dated 27th July, 2021 is annexed to the communication. While allowing the application, certain conditions are referred to in the order. It is submitted that by condition No. 5, the petitioner was directed to furnish cash surety in the sum of Rs. 30,000/- with a personal bond of Rs. 10,000/- and two sureties, in the nature of relatives of the petitioner, in the sum of Rs.20,000/-. It is submitted in the communication dated 22nd April, 2022 that the petitioner failed to comply with the conditions, as such, the petitioner could not be released on parole leave.

3. Learned appointed counsel for the petitioner vehemently submitted that the petitioner is ready to abide by all the conditions imposed in the order. He submitted that condition No.5 is an onerous condition and the petitioner who is lodged in prison for a considerable

length of time i.e. for nearly 8 ½ years was not financially very sound and was the only earning member of the family. It is submitted by learned counsel appointed for the petitioner that as the petitioner has now suffered his punishment, family of the petitioner is not in position to make arrangements so as to furnish cash surety. It is submitted by learned counsel appointed for the petitioner that the family of the petitioner consists of his aged father and mother and considering the difficulties being faced by the family of the petitioner and the financial constraints of the petitioner, this Court, may modify condition No. 5 and impose certain reasonable conditions on the petitioner. It is also submitted by learned counsel appointed for the petitioner that in case the petitioner is unable to comply with the condition, he would be not in any position to avail benefit of the leave granted to him and this would frustrate the object of the provision of parole leave.

4. On perusal of the letter submitted to this Court at the instance of the petitioner, we find considerable merit in the submission of learned counsel appointed for the petitioner. It is stated in the letter that the family of the petitioner consists of his aged father and mother and the petitioner is desirous of visiting his family members as after 15th November, 2020, he could not avail a single leave.

5. Considering these facts as well as the submission of learned

counsel appointed for the petitioner that the petitioner is ready to abide by other conditions except condition No. 5, we deem it appropriate to pass the following order :

O R D E R

1. The petition is partly allowed. Accordingly, we modify the order of the prison authorities dated 27th July, 2021 only to the extent of condition No.5, by directing release of the petitioner on furnishing cash surety of Rs.10,000/- with a personal bond of Rs. 10,000/- along with two sureties of Rs.10,000/- each, out of which, one surety shall be a relative of the petitioner. Rest of the order remains intact.

With these observations and directions, the petition is accordingly disposed.

6. The learned counsel appointed to appear on behalf of petitioner be paid fees as per the Rules.

7. 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.)