

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

WRIT PETITION NO. 3915 OF 2021

Siraj Jamsur Bhil	...Petitioner
vs.	
The State of Maharashtra	...Respondent

Mr. Sagar Rane - Advocate for the Petitioner (Appointed by Legal Aid)
Mr. K. V. Saste – APP for the Respondent – State.

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

DATE : 30th MARCH, 2022

P. C. :-

1. A very limited grievance raised in the Petition. The Petitioner is Convict No. 11517, presently lodged in Nashik Road Central Prison suffering his life imprisonment awarded by the learned Addl. Sessions Judge, Nandurbar vide Judgment/Order dated 28/12/2017. The Petitioner submitted an application for availing emergency parole leave on the backdrop of out break of Covid-19 pandemic.

2. The application of the Petitioner was positively considered and the Petitioner was permitted to release from the prison subject to conditions namely, cash surety and security bond of Government employee and another bond by one of the relatives of the Petitioner.

3. The counsel for the Petitioner submitted that instead of considering the request of the Petitioner sympathetically, only on mechanical approach the Prison authorities are not inclined to relax the condition and this approach is reflected in the communication forwarded to this Court dated 27/07/2021.

4. The learned counsel submits that recently Division bench of this Court was pleased to consider very identical issue and vide Order dated 11/08/2021, the Division bench of this Court was pleased to observe that the notification dated 26/08/2016 and the Rule 24A substituted by Notification dated 14/04/2018 is to be considered as guideline and the Authorities can not insist for the security bond only of a State Government or Central Government employee. It may be useful for our purpose to refer the observations of the Division bench and the same reads thus:-

“4. Mr. Jaiswal, the learned counsel for the petitioner submits that the aforesaid condition of furnishing surety, who is a government servant, is harsh and the Petitioner’s right to be released on parole is virtually defeated by imposing the said condition.

5. On the other hand, learned APP supports the impugned order. A copy of the notification dated 26th August, 2016 is tendered for the perusal of the Court. In Rule No. 24A of the Notification, the categories of persons who can be accepted as sureties are indicated.

It provides that two of the sureties shall be
(i) State of Central Government servant, or
(ii) Elected office bearers or
(iii) Family members having good conduct or
(iv) Friends and relatives having good conduct.

6. *It is pertinent to note that Rule 24A has since been substituted by notification dated 14th April, 2018. In any event, if the said notification is considered as a guideline, the aforesaid prescription does not provide that the surety must be a government servant. Sureties can be from any of the four categories.*

7. *In this view of the matter, the purpose for which the surety is insisted upon would be served if an option as given to the petitioner to furnish a surety who satisfied the qualification provided in category Nos. 3 and 4 i.e. (iii) Family members having good conduct (iv) Friends and relatives having good conduct.*

8. *In our view, insistence on furnishing a surety who is a government servant may, in a given case, frustrate the very object of directing the released of the prisoner on emergency parole. Such a condition operates onerously.*

(Emphasis supplied by us.)

5. It is not in dispute that the State Government was represented

through learned APP in Criminal Writ Petition No. 2667 of 2021 considering this peculiar aspects, we are of the opinion that the Order of this Court dated 11/08/2021 is fairly applicable to the present Petition also and we see no reason to take any other/different view that the view adopted by the Division bench of this Court in the Order dated 11/08/2021.

6. Accordingly, the Petition is allowed by modifying the condition to directing the Petitioner to submit the security bond of Government Servant. The Petitioner be released on furnishing surety who is family members having good conduct or friends and relatives having good conduct instead of Government servant.

7. Then the learned counsel also submits that apart from the condition of security bond of the State Government Servant, there is another condition in the nature of cash security to the extent of Rs. 50,000/- is not only on exorbitant one but is onerous condition.

8. The learned counsel in support of this submission invited our attention to the statement annexed to report submitted to this Court dated 03/08/2021 by the Nashik Road Central Prison. The statement is under caption “नाशिकरोड मध्यवर्ती कारागृह येथील बंद्याचा नामनिर्देशन तक्ता”.

9. The learned counsel submits that the Petitioner is a member of tribal community and he is resident of the district very admittedly the

population of tribal community is to the large extent namely, Nandurbar District. Mr. Sagar Rane, the learned appointed counsel for the Petitioner further submitted that even the other details in the table would disclose that the Co-accused of the Petitioner is also tribal.

10. The appointed counsel further submits that considering these aspects asking the Petitioner who may not be a very financially sound nor having sufficient resources or means to support his family depositing the cash security of an amount of Rs. 50,000/- would be nearly an impossible act for the Petitioner and failure of the Petitioner would ultimately result in depriving the benefit granted to the Petitioner.

11. Thus, the counsel for the Petitioner submits that denial of grant of benefit to the Petitioner would be nothing but an act of frustrating object of the provision. As such the learned counsel prayed for modification of that condition also.

12. The learned counsel for the Petitioner made out the case for modifying the conditions in respect of cash security as the counsel for the Petitioner was justifying this Court that Petitioner belonging to tribal community and he may not be having sufficient financial resources or means to supports his family and failure to comply with this conditions would be result in depriving the benefit granted to the Petitioner.

13. Considering these statements of the learned counsel, we deem it

appropriate to modify the condition of cash Security also and we permit the Petitioner to deposit cash security to the tune of Rs. 10,000/-. The Respondent-State i.e. Superintendent of Nashik Road Central Prison directed that if the Petitioner deposited cash security of Rs. 10,000/-, the same may be accepted as compliance of the condition.

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

15. Parties to act upon an authenticated copy of this Order.

16. The fees of the learned counsel appointed to represent the Petitioner be paid as per the Rules.

(S. M. MODAK, J.)

(PRASANNA B. VARALE, J.)