

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3652 OF 2021

Rafiq Abdul Rehman Shaikh. ...Petitioner.
Versus
State of Maharashtra. ..Respondent.

Mr. Sushil Inamdar for the Petitioner [Appointed adovcate].
Mrs. S. D. Shinde, APP for the Respondent – State.

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

Date : April 4, 2022.

P. C. :

1. Heard learned counsel for the Petitioner. The Petitioner is Convict No.C-7685 lodged in Nashik Road Central Prison, Nashik suffering the life imprisonment awarded t o him in Sessions Case No. 15 of 2007 by Sessions Judge, Ratnagiri, is before this Court challenging the order dated 12th August 2021 whereby the application preferred by the Petitioner seeking of emergency parole leave is rejected.

2. Learned counsel for the petitioner submitted that on the ground of belated surrender by the Petitioner on previous occasion, the application of the Petitioner has been rejected. Learned counsel further submitted that for this belated surrender, the Petitioner would face appropriate punishment however on that count the application for

grant of parole leave ought not to have been rejected.

3. Learned APP opposed the petition and submitted that the belated surrender by the petitioner is for an exorbitant length of time and this length of time would clearly show that the petitioner has misused the liberty.

4. In view of these rival submissions, we have gone through the material placed on record. The Petitioner had prayed for emergency parole leave in view of the Government Resolution (GR) dated 8th May 2020. The record available with the prison authorities which is submitted before this Court clearly shows that firstly the Petitioner obtained leave on 26th January 2010 and he reported back to the prison authorities on due date, namely, after enjoying the leave for 21 days. On the second occasion, when the Petitioner was granted leave and released on 23rd January 2012 for the period of 14 days, the Petitioner was required to be brought back to the prison by effecting his arrest on 11th September 2019. Thus, the petitioner has overstayed for the exorbitant length of time for 2740 days.

5. A separate report dated 18th August 2021 has been submitted to this Court by the Superintendent of Prisons, Nashik Road Central Prison, Nashik. The said report discloses that whilst the Petitioner was overstaying the parole leave, committed another crime

and an FIR bearing CR. No.175 of 2014 has been registered against him at Rabodi Police Station on the allegation of commission of offence punishable under sections 307 and 120B read with 34 of the Indian Penal Code, 1860.

6. The above referred facts clearly indicate that the petitioner has misused the liberty of parole and has further breached the condition of parole leave that he would not indulge in any illegal act or would not commit any offence. The registration of crime against the Petitioner for serious offence like one punishable under section 307 of IPC clearly shows that the petitioner has committed breach of condition / undertaking. Considering these facts, we are unable to find fault in the rejection order impugned in the present petition.

7. True it is that in some of the matters, this Court has taken a view that for the belated surrender, the prison authorities may punish the prisoner and for such belated surrender the prisoner may not face the order of rejection. But in the present matter, considering the inordinate delay in surrendering and the commission of another offence by the petitioner whilst he was on leave, we are of the opinion that the Respondent authorities were justified in rejecting the application of Petitioner. The petition, thus, being meritless deserves to be dismissed and the same is accordingly **dismissed**.

8. We, however, make it clear that this order shall not be used as a rider against the Petitioner by the prison authorities in case the Petitioner files an application for leave if the Rules provide for filing of such an application and such application be decided by the prison authorities on its own merits.

9. The Office / Committee shall quantify and pay the fees of the appointed advocate as per the extant Rules.

[S. M. Modak, J.]

[Prasanna B. Varale, J.]