

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3642 OF 2021

Parvej Farukh Dalvi. ...Petitioner.
Versus
State of Maharashtra. ..Respondent.

Mr. Sushil A. Inamdar, Advocate appointed for the Petitioner.
Mrs. S. D. Shinde, APP for Respondent – State.

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

Date : April 4, 2022.

P. C. :

1. In the present letter petition, the Petitioner – a convict suffering life sentence in Nashik Road Central Prison, Nashik has challenged the order of respondent – prison authority. Learned counsel Mr. Sushil Inamdar appointed to represent the petitioner in the present matter, invited our attention to the order dated 18th August 2021 passed by the the Superintendent, Nashik Road Central prison, Nashik. The counsel submitted that the Petitioner prayed for an emergency parole leave in view of the government resolution (GR) dated 8th May 2020 issued by the Government of Maharashtra on the backdrop of covid-19 pandemic. Learned counsel submitted that rejection order is nothing but result of non application of mind by the authority.

2. With the assistance of learned counsel for the Petitioner

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and learned APP, we have gone through the material placed on record. Perusal of the order impugned in writ petition shows that rejection of the application is on two grounds; firstly, all the necessary cautionary measures are taken in the prison so as to deal with Covid-19 virus. It is stated in the order that special interests are initiated by Nashik City Municipal Corporation and the prison authorities have taken care by vaccinating the prisoners and the first dose of vaccination of all prisoners is complete. The second ground assigned is the apprehension that petitioner will flee away if released on parole.

3. While dealing with identical orders passed by the prison authorities, this Court has taken a view that the second reason assigned by the prison authorities for rejection of emergency parole is not sustainable on the face of it and accordingly those matters were remitted back to the prison authorities to pass orders afresh.

4. In the present petition, the first reason is of cautionary measures taken by the prison authorities. We may not find fault with the prison authorities insofar as the first ground is concerned. Insofar as the second ground is concerned, bare perusal of the order indicates that the Petitioner prior to submitting the present application in view of the GR dated 8th May 2020, had not availed either parole or furlough leave even for a single occasion. This observation is made by the authority and it

can be certainly said that this observation made by the authority is on the backdrop of record available with the authority. If that is so, the apprehension of the authority that petitioner may abscond once released on leave, is ill-founded and as such is not sustainable.

5. Considering the above referred facts, the petition is partly allowed. The order impugned in the petition is quashed and set aside. The Respondent prison authority is directed to decide the application of the Petitioner afresh. The afresh decision shall be taken by the Respondent authority as expeditiously as possible and not later than four weeks from the date of receipt of a copy of this order.

6. The fees of the appointed advocate be quantified and paid as per the extant Rules.

7. All concerned to act upon a copy of this order issued by the Registry of this Court as an authenticated copy of the order.

[S. M. Modak, J.]

[Prasanna B. Varale, J.]