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

WRIT PETITION NO. 3406 OF 2021

Kisan Bhaiji Surela

...Petitioner

Versus

The State of Maharashtra

...Respondent

- Mr. Sushil A. Inamdar for the Petitioner.
- Ms. S.D. Shine, APP, for the Respondent – State.

**CORAM : PRASANNA B. VARALE &
ANIL S. KILOR, JJ.**

DATE : FEBRUARY 08, 2022.

PER COURT :

1. Heard learned Counsel appointed for
Petitioner.

2. The very limited grievance is raised in the
Petition. The Petitioner who is presently lodged in
Nashik Road Central Prison, & is suffering life
imprisonment as Convict No. 10899. The Petitioner vide
judgment and order passed by learned Sessions Judge on
17th August, 2016, in Sessions Case No. 30/2015 is
suffering life imprisonment, filed an application for
grant of emergency parole leave. Vide order dated 07th
June, 2021 the competent Authority by considering the

necessary provisions of law as well as the Government Gazette Notification dated 08/05/2020 and decisions of the High Power Committee dated 07/05/2021 and 11/05/2021, allowed the application for grant of emergency parole leave and granted parole leave for 45 days to the Petitioner subject to conditions stated in the order. The Petitioner was directed to report to the prison authorities on a scheduled date after completion of parole leave.

3. The Petitioner was aggrieved by the condition no. 5 of the order dated 07th June, 2021 whereby the Petitioner was directed to deposit cash surety of Rs. 20,000/- with a personal bond of Rs. 15,000/- and two sureties with their respective surety bonds of Rs. 20,000/- each.

4. Learned Counsel for the Petitioner submits that the Petitioner who is suffering the life imprisonment in the prison was earning his livelihood by doing labour work. The family of the Petitioner is already facing financial hardship and the wife of the Petitioner maintaining family of herself and two daughter by doing labour work. The family had no other

means to meet both ends except the labour work of wife of the Petitioner. Learned Counsel for the Petitioner by inviting our attention to the statements made in the Application submitted that on earlier occasion also though the Petitioner was directed to be released but for non-availability of surety, the Petitioner was unable to avail the parole leave. Thus, it is the submission of learned Counsel for Petitioner that though Petitioner received an order in his favour but the same is only paper order and in reality due to the financial difficulties faced by the Petitioner, the Petitioner is not in a position to avail the fruits of the order. As such, the order would be nothing but nullity for the Petitioner. It is also the submission of learned Counsel for the Petitioner that by imposing such harsh condition, the object of granting emergency parole leave to the Petitioner is frustrated.

5. On perusal of the order impugned in the Petition as well as the Application submitted at the instance of the Petitioner, we find considerable merit in the submission of learned Counsel for Petitioner.

6. The Counsel for Petitioner was justified in

submitting before this Court that by putting such harsh condition the object of grant of emergency parole leave to convicts in general and Petitioner in particular is frustrated. The Petitioner expressed his willingness to provide cash surety to the extent of Rs. 10,000/- with one surety. Thus, it can be said that the statement of Petitioner shows that the Petitioner is willing to abide by some condition and not asking for his unconditional release. As such, the statement of the Petitioner shows his *bonafide*.

7. Considering this aspect, the Petition is allowed and the order passed by the Authority dated 07.06.2021 is modified by substituting the condition no. 5 with the condition that the Petitioner shall provide one simple surety and cash surety of Rs. 10,000/- (Rs. Ten Thousand only) and would also provide the necessary details of the person who is ready and willing to stand as surety.

8. On verifying those details provided by the Petitioner and by effecting the said modification in the condition, the Respondent Authority is directed to release the Petitioner maintaining the other conditions

of order dated 07th June, 2021, on emergency parole leave for 45 days.

9. Needless to state that the Petitioner to report the prison Authority on completion of period of parole leave.

10. We appreciate the assistance rendered by Mr. Sushil A. Inamdar appointed for Petitioner and quantify his fees at Rs. 5,000/- (Rs. Five Thousand Only). The High Court Legal Services Committee, Mumbai is directed to pay the fees so quantified to learned Counsel within four weeks from today.

11. Parties to act upon an authenticated copy of this order.

(ANIL S. KILOR, J.)

(PRASANNA B. VARALE, J.)