



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 72 OF 2025

Mahendra S/o Keshrinath Mistry (C-5420)

Age : 50 Years, Occ. Convict,

R/o. At present Confined in Open Prison Paithan,

Dist. Chhatrapati Sambhajanagar

..Petitioner

VERSUS

1. The State of Maharashtra,
Secretary Home Department,
Mantralya, Mumbai.

2. Deputy Inspector General of Prisons,
(Special Police Inspector General (Prisons)
Central Division, Chhatrapati Sambhajanagar.

3. Superintendent,
Open Prison Paithan,
Dist. Chhatrapati Sambhajanagar

..Respondents

.....

Advocate for the Petitioner : Mr. Rupesh A. Jaiswal

A.P.P. for Respondent/State : Mr. A. M. Phule

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**CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.**

DATED : JANUARY 20, 2025

ORDER:-

1. Not on board. Taken on board.

2. The present petition has been filed for quashing and setting
aside/modifying order dated 16.01.2025 passed by respondent No.2.

3. The factual matrix leading to the application are that brother of the present applicant expired on 08.01.2025. He therefore, filed an application for death parole for releasing him. By order dated 16.01.2025 respondent No.2 allowed the application, however while allowing the application conditions were put that petitioner should give PR Bond of Rs. 2,000/- and surety of the same amount as well as cash security of Rs. 2,000/-. Other conditions have also been imposed. Now the petitioner is coming with a case that it would be difficult for him to give surety. According to him, his surety is his mother and it will not be possible for her taking into consideration the fact that her another son has expired to give suretyship.

4. The learned Advocate for the petitioner submits that taking into consideration the conduct of the petitioner, he has been transferred to open prison and therefore, respondent No.2 ought to have considered the Full Bench decision of this Court in the case of **Deepak Wakalekar Vs. State of Maharashtra reported in 2011(2) Bom CR (Cri.) 584**

5. The learned A.P.P. after waiving service of notice for the respondents submits that there is no such term which can be said to be illegal. Certainly respondent No.2 is within his power to ask for the surety. The amount that has been stated is also meager. The first and foremost fact is that the petitioner has intentionally not produced the

copy of his application dated 10.01.2025. Whether he had shown readiness to give the suretyship of his mother in the said application is then a question, but then if we consider term No.7 in the impugned order then it can be seen that it appears that the petitioner had shown his readiness to give suretyship of his mother and therefore, it has been stated therein that during the period of leave the petitioner would stay at the address of the surety. Now the petitioner is coming with a case that it would be difficult for him to give the surety. The petitioner has shown his readiness to give PR bond and even cash security.

6. Certainly we are aware that when it would be a death parole then sentiment are required to be considered first, but at the same time we cannot take away the power of the authority who is responsible for grant of such leave. There are several factors which are required to be considered when an inmate is allowed to go on leave. Taking into consideration the fact that the jail is experiencing late surrenders. The transfer of applicant to open prison is one of the factor that was required to be considered and accordingly it appears that it has been considered. That is why it appears that the amount of PR Bond, cash security and suretyship is only Rs. 2,000/-. In fact we do not find any illegality in the order requiring either setting aside or modification. However, by taking humanitarian approach, we modify the order and direct respondent No.2 to release the petitioner on PR

Bond of Rs. 2,000/- and cash security of Rs. 20,000/-(Rupees Twenty thousand) to be deposited before Respondent No.3. The petitioner is allowed to go on leave. We clarify that rest of the conditions are kept as it is.

(ROHIT W. JOSHI)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Y.S. Kulkarni