

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.94 OF 2015
IN
CRIMINAL APPEAL NO.1127 OF 2006**

Guljarsingh @ Rinku Mahendrasingh Kodiyari v/s The State of Maharashtra	... Applicant ... Respondent
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Mrs Nasreen Ayubi for Applicant (Appointed).
Mrs A.S. Pai, APP for Respondent – State.

**CORAM : SMT V.K. TAHILRAMANI &
SHRI B.P. COLABAWALLA JJ.**

DATE : 17TH MARCH 2015

P.C.:

1. Heard learned counsel for the applicant and the learned APP for the State.
2. The applicant has made four prayers in this application. The first prayer is that he may be released prematurely under section 433 Cr.P.C. under the 14 year rule. The second prayer is that he is eligible to be transferred to open prison and he has not yet been transferred to open prison, hence, he should be transferred to open prison. The third

prayer is for grant of furlough leave. The fourth prayer is transfer to a jail in the State of Punjab.

3. The affidavit filed by Shri Jaysing L. Pawara, Deputy Secretary (Prisons) shows that the applicant was convicted under sections 302, 395, 396, 324, 34 of IPC by the Sessions Court, Mumbai and he is undergoing imprisonment at Kolhapur Central Prison, Kalamba, District Kolhapur since 30th April 2005. The applicant has not yet completed the minimum mandatory period of actual imprisonment of 14 years as of today, hence, he is not eligible for pre-mature release under section 433A of Cr.P.C. Moreover, the Apex Court has stayed the process of granting remission by the State Government to the convicts sentenced to life vide interim order dated 9th July 2014 in Writ Petition (Criminal) No.48 of 2014. Thus, in view of the order of the Supreme Court, the case of the applicant for pre-mature release cannot be considered at this stage. However, as and when the stay is vacated by the Supreme Court, the case of the applicant shall be considered for premature release.

4. As far as the prayer for transfer to open jail is concerned, it is clear that the applicant has been convicted under section 396 of IPC and in view of Rule 4(ii)(g) of section I

of Statutory Rules for Open Prison mentioned in Chapter II of the Maharashtra Prison Manual 1979, he would not be eligible for being transferred to open prison. However, as per the order dated 12th August 2010 of the Division Bench of this Court in Criminal Writ Petition No.362 of 2010 alongwith criminal writ petition No.630 of 2010 alongwith criminal writ petition No.1393 of 2010, the Division Bench held that where the convict has been sentenced for the offences punishable under sections 393, 394 or 397 of IPC alongwith the offence punishable under section 302 of IPC and the sentence is directed to run concurrently, the convict will be eligible for admission to the open prison on completion of the sentences so awarded under sections 392, 394 or 397 of IPC. It is pertinent to note that these observations were made in relation to Rule 4(2) of the Maharashtra Open Prisons rules 1971. Rule 4(2)(vii) of the said Rules reads as under :-

“4(2) The following prisoners shall not normally be sent for confinement in an open prison :-

(vii) prisoners convicted and sentenced for offences under sections 121, 121-A, 122, 123, 124, 124-A, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 376, 392 to 402 of the Indian Penal Code or for offences under the Sea Customs Act.”

Thus, it is clear that this Court also contemplated that prisoners convicted under sections 395 or 396 of IPC can be sent for confinement in an open prison after their period of imprisonment under the said sections is over. In such a situation, this decision would also apply to the facts of the present case and the applicant would be eligible for being sent to open prison when the imprisonment under sections 395 and 396 is completed. It is stated by the learned APP that the applicant has completed the period of imprisonment under sections 395 and 396 of IPC, hence his case will be considered for being sent to open prison as and when vacancy arises in open prison.

5. In relation to furlough leave, the applicant has stated that since his arrest till today, he has not availed of parole or furlough leave, hence he may be released on furlough leave on personal bond. As far as this prayer is concerned, it would be open for the applicant to follow the procedure laid down by law for being released on furlough. If an application is made by the applicant for furlough the concerned authority shall consider the same in accordance with law.

6. The last prayer of the applicant is that he may be

transferred to a prison in State of Punjab. It is seen that the jail authority has already entered into communication with the concerned authority in the State of Punjab for shifting the applicant to Ludhiana / Amritsar prison and the State is expecting reply from the State of Punjab so that they can take final decision in this regard as per rule 10(a)(b) of section II of Non-Statutory Rules, Removal of Prisoners under Chapter 35 of Maharashtra Prison Manual 1979. In such case the concerned authority to consider shifting the applicant to a prison in Punjab as and when communication is received from the authorities in Punjab.

7. Thus this application is disposed of with the above directions. This order be communicated to the applicant who is in Kolhapur Central Prison. Fees be paid to the appointed Advocate as per rules.

(SHRI B.P. COLABAWALLA, J.) (SMT V.K. TAHILRAMANI J.)