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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1400 OF 2015

Narendra Bhalchand Bhoir

..Petitioner.

V/s.

State of Maharashtra and Ors.

..Respondents.

Mr.Ganesh Gole i/b. Ritesh Ratnam for the petitioner.

Mr.J.P.Yagnik, A.P.P. for the respondent-State.

**CORAM : RANJIT MORE AND
V.L.ACHLIYA, JJ.**

DATED : 26TH AUGUST, 2015

P.C. :-

1. Heard Mr.Gole, the learned counsel for the petitioner and Mr.Yagnik, the learned A.P.P. for the State.

2. The petitioner is aggrieved by the decision of respondent Nos.2 and 4 rejecting his application to transfer him to open prison.

3. The petitioner's application to transfer him to open prison is inter alia rejected on the following grounds:-

(i) The petitioner is convicted for an offence under TADA Act;

- (ii) The petitioner is connected to the gang of Bhai Thakur and, therefore, is not entitled to transfer to open prison in the light of the provisions of Rule 4(ii)(i) of the Maharashtra Open Prison Rules, 1971;
- (iii) The petitioner is not entitled for transfer to open prison in view of G.R. dated 15th March, 2010;
- (iv) Similar application of the co-accused was rejected and the writ petition filed by him was also rejected by the High Court.

4. The petitioner was charged for offences punishable under Sections 120-B, 302, 307, 201, 217, 218 read with Sections 34 / 149 of the Indian Penal Code, Section 3 read with 25(1)(a) of the Arms Act and Sections 3(1), 3(2), 3(3) and 3(4) of TADA Act. The trial Court acquitted the petitioner. However, the Apex Court convicted the petitioner for the said offences and sentenced him to imprisonment for life for offence punishable under Section 302 of the Indian Penal Code. For the offence punishable under the TADA Act, the petitioner was sentenced to undergo imprisonment for 10 years. The Apex Court judgment is annexed to the petition. Perusal of the judgment shows that the Apex Court relied upon the petitioner's confession and the deposition of other witnesses. The petitioner was working for a Bhai Thakur gang, hence this petitioner is covered under Rule 4(ii)(i) of the Maharashtra Open Prison Rules, 1971 and, therefore, not entitled to transfer to an Open Prison

Rules.

5. Be that as it may, the application for similar relief made by the co-accused Dnyaneshwar Bhaskar Patil was rejected. Patil, thereafter filed Writ Petition No.3682 of 2011 and the same was dismissed by this Court on 10th April, 2012. In that petition, the argument of the co-accused Patil that G.R. dated 15th March, 2010 is not applicable was rejected.

6. Mr.Gole, the learned counsel for the petitioner submits that another co-accused of the petitioner by name Patrik Fransis Tuskano was transferred to the open prison and the case of the petitioner can therefore be considered on the principles of parity. This submission cannot be accepted as the said Patrik Fansis Tuskano was transferred to open prison in the year 2004 i.e. much earlier to the G.R. dated 15th March, 2010. In any case, the petitioner cannot seek parity in illegality.

7. In the facts and circumstances of the case, we do not find any illegality in the rejection of the petitioner's application. The petition is dismissed.

(V.L.ACHLIYA, J.)

(RANJIT MORE, J.)