

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

CRIMINAL WRIT PETITION NO. 1323 OF 2016

Bharat s/o. Vishnu Pandhare,
Age: 39 Years, Occu: Nil Convict No.141,
R/o. at Chal No.15, Room No.E-35,
G.T.B. Nagar Panjabi
Camp Antop Hill, Mumbai
At present in Open Prison Visapur,
Dist. Ahmednagar. **PETITIONER**

VERSUS

1. The State of Maharashtra
2. The Deputy Inspector General of Prison,
West Division Yerawada, Pune.
3. The Superintendent of Open Prison,
Yerawada, Pune.
4. The Superintendent of Open Prison,
Visapur, Dist. Ahmednagar.

RESPONDENTS

...

Mrs.Bharti B. Gunjal, Advocate for the
petitioner
Mr.D.R.Kale, APP for Respondent – State

...

**CORAM: S.S.SHINDE &
K.K.SONAWANE, JJ.**

Reserved on : 16.12.2016
Pronounced on : 19.12.2016

JUDGMENT: (Per S.S.Shinde, J.):

1. Heard.

2. Rule. Rule made returnable forthwith, and heard finally with the consent of the parties.

3. By way of filing present Writ Petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the correctness and legality of the orders passed by respondent No.2 dated 10.12.2015 and 16.08.2016.

4. The learned counsel appearing for the petitioner submits that the petitioner is undergoing sentence of life imprisonment in Open Prison at Visapur, District Ahmednagar. He has undergone 18 years, 1 month and 4 days sentence, including remission on the date of filing of this Petition. It is submitted that the father of the petitioner is residing at Mumbai, and therefore, due to long distance between Visapur Open Prison and Mumbai, the relatives of the petitioner are not able to

meet him. The age of father of the petitioner is 83 years. He is not keeping well.

5. It is submitted that the petitioner filed application for his transfer to Open Prison Yerwada or Open Prison Thane, however, request to transfer him in Open Prison Yerwada or Open Prison Thane has been turned down. It is further submitted that the report submitted to respondent no.2 shows that the capacity to accommodate the convict/prisoner in Yerwada Prison is 172 and it appears that there are only 153 prisoners. Therefore, relying upon the pleadings in the Petition, annexures thereto and also rejoinder-affidavit and affidavit-in-reply filed by the respondents, the learned counsel appearing for the petitioner submits that the petition deserves to be allowed.

6. Pursuant to the notices issued to the respondents, one Mr. Dattatraya Ganpat

Gawade has filed affidavit-in-reply. It is stated in the said affidavit-in-reply that pursuant to the order passed by the Additional Director General of Police and the Inspector General of Prisons, Maharashtra State, Pune, the petitioner came to be transferred from Kolhapur Central Prison to Visapur Open District Prison on 2nd March, 2014, for undergoing the remaining portion of his sentence. Till 25th November, 2016, he has undergone 19 years, 7 months and 20 days sentence including remission. The application of the petitioner is forwarded to Yerwada Open Prison, Pune and Thane Open Prison to the Deputy Inspector General of Prisons, Western Region, Pune along with home enquiry report and recommendations.

7. It is further submitted that the Deputy Inspector General of Prisons, Western Region, Pune by his order bearing No.JC/Prisoner transfer/166/15/BVP/7114/2015,

WR 4 (1) dated 10.12.2015 rejected the application of the petitioner, seeking a permanent transfer to Yerwada Open Prison, Pune, on the ground that the Superintendent of Yerwada Open Prison had stated that there is no vacant place to accommodate the petitioner.

8. It is further submitted that the Deputy Inspector General of Prisons, Western Region, Pune by his order bearing No. JC/Prisoner transfer/166/15/BVP/689/2015, WR 4 (1) dated 02.02.2016 rejected the application of the petitioner seeking permanent prison transfer to Thane Open Prison on the ground that the Deputy Inspector General of Prisons, Southern Region, Byculla, Mumbai had stated that there was no vacant place for accommodating the petitioner in Thane Open Prison.

9. It is further submitted that the

respondent no.4 forwarded the application of the petitioner for temporary transfer to Thane Open Prison for the purpose of meeting his family members, to the Deputy Inspector General of Prisons, Western Region, Pune along with the home enquiry report and recommendations.

10. It is further submitted that the Deputy Inspector General of Prisons, Western Region, Pune by his order bearing No. JC/Prisoner transfer/31/16/BVP/4445/2016, WR 4 (1) dated 16.08.2016 rejected the application of the petitioner seeking temporary transfer to Thane Open Prison on the ground that the Deputy Inspector General of Prisons, Southern Region, Byculla, Mumbai, had stated that there is no sufficient place for accommodating new prisoners in Thane Open Prison, Thane.

11. The sum and substance of the

contention of the respondents is that there is no sufficient space to accommodate the petitioner in Yerwada Open Prison and also in Thane Open Prison.

12. It is assertion of the petitioner that in Yerwada Prison, there are only 153 prisoners and there is space to accommodate another 19 prisoners. As contended by the petitioner, the total capacity of Yerwada Prison to accommodate the prisoners is 172, and therefore, the reasons assigned in the impugned order are contrary to the record.

13. Be that as it may, we are not inclined to issue any mandatory directions to the respondents, however, in our opinion the ends of justice would be met if the respondent authorities are directed to reconsider the prayer of the petitioner for his transfer either in Yerwada Open Prison or Thane Open Prison as the case may be, keeping

in view the current availability of the vacancies / space in the said Jail and relevant Government policy to transfer of prisoner from one prison to another prison.

14. In that view of the matter, without entering into the correctness of the order passed by the respondents, we direct respondents to consider the request of the petitioner afresh for his transfer to either in Yerwada Open Prison or Thane Open Prison, as the case may be, on its own merits, as expeditiously as possible, however, within 6 weeks from today and communicate the said decision to the petitioner.

15. Rule is made absolute in the above terms. The Writ Petition stands disposed of accordingly.

Sd/-

[K.K.SONAWANE]
JUDGE

Sd/-

[S.S.SHINDE]
JUDGE