

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.3859 OF 2014

1. Rauf Sherbadar Khan & anr. ... Petitioners

Vs.

The State of Maharashtra & Ors. ... Respondents

Mr.Rahul Arote for the Petitioners
Mr.H.J. Dedia, APP, for Respondent - State

CORAM: **SMT. V.K. TAHILRAMANI &
MRS.MRIDULA BHATKAR, JJ.**

DATE: **AUGUST 2, 2016**

P.C.:

1. Heard both sides.
2. The prayer of both the petitioners in this petition is that they be sent to Open Prison. As far as the petitioner No.1 Rauf Khan is concerned, on 28.9.2015, he was released on furlough for a period of two weeks. He was supposed to surrender to prison on due date i.e., 13.10.2015. As the petitioner Rauf Khan did not surrender to the prison on due date, C.R. No.453 of 2014 came to be registered against him under section 224 of the Indian Penal Code. He was arrested by the police on 4.11.2015 and brought back to the prison on 6.11.2015. Rule 4(ii) of Chapter 2 of the Maharashtra Prison Manual which deals with "Open Prison", states that prisoners having a second case pending in a Court, shall not normally be

sent for confinement in Open Prison. In view of Rule 4(ii), the Petitioner Rauf Khan would not be eligible to be sent to Open Prison at this stage.

3. As far as petitioner No.2 Yusuf Khan is concerned, earlier he was not sent to Open Prison as he had a second case pending in the Court i.e., C.R. No.15 of 20014 which was under section 324 r/w section 34 of the Indian Penal Code. The affidavit of Shri Kurlekar, Deputy Superintendent attached to Yerwada Central Prison, Pune, shows that the petitioner No.2 Yasin Khan has been acquitted in the said case, hence, his case will be put up before the Open Prison Selection Committee when it meets on the next date and the case of the petitioner Yusuf Khan will be decided by the Selection Committee as per merits. In view of this stand taken in the affidavit, as far as petitioner No.2 Yusuf Khan is concerned, the Committee to take a decision on the case of the petitioner No.2, as expeditiously as possible.

4. Writ petition is disposed of in the above terms.

(MRIDULA BHATKAR, J.)

(V.K. TAHILRAMANI, J.)