

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

CRIMINAL WRIT PETITION NO. 716 OF 2019

Sayyad Ali S/o. Sayyad (A-35674),
Central Jail, Aurangabad.

.. Petitioner

Versus

1 State of Maharashtra,
Through Superintendent of Jail,
Central Jail, Aurangabad.

2 State of Maharashtra,
Through Superintendent of Jail,
Open Prison, Paithan.

3 State of Maharashtra,
Through D.I.G. Prisons, Aurangabad.

4 State of Maharashtra,
Through I.G. Prisons, Pune.

.. Respondents

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Mr. Rupesh A. Jailswal, Advocate for Petitioner
Mr. M. M. Nerlikar, APP for Respondents

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**WITH
CRIMINAL WRIT PETITION NO. 717 OF 2019**

Abbas Ali S/o. Sayyad (A-35675),
Central Jail, Aurangabad.

.. Petitioner

Versus

1 State of Maharashtra,
Through Superintendent of Jail,
Central Jail, Aurangabad.

2 State of Maharashtra,
Through Superintendent of Jail,
Open Prison, Paithan.

3 State of Maharashtra,
Through D.I.G. Prisons, Aurangabad.

4 State of Maharashtra,
Through I.G. Prisons, Pune.

.. Respondents

...

Mr. Rupesh A. Jailswal, Advocate for Petitioner
Mr. M. M. Nerlikar, APP for Respondents

...

**WITH
CRIMINAL WRIT PETITION NO. 810 OF 2019**

Habbirao S/o. Bhauso Khamkar,
Central Jail, Aurangabad.

.. Petitioner

Versus

- 1 State of Maharashtra,
Through Superintendent of Jail,
Central Jail, Aurangabad.
- 2 State of Maharashtra,
Through Superintendent of Jail,
Open Prison, Paithan.
- 3 State of Maharashtra,
Through D.I.G. Prisons, Aurangabad.
- 4 State of Maharashtra,
Through I.G. Prisons, Pune.

.. Respondents

...

Mr. Rupesh A. Jailswal, Advocate for Petitioner

Mr. R. D. Sanap, APP for Respondents

...

**WITH
CRIMINAL WRIT PETITION NO. 811 OF 2019**

Santosh S/o. Shivaji Pawar,
Central Jail, Aurangabad.

.. Petitioner

Versus

- 1 State of Maharashtra,
Through Superintendent of Jail,
Central Jail, Aurangabad.
- 2 State of Maharashtra,
Through Superintendent of Jail,
Open Prison, Paithan.
- 3 State of Maharashtra,
Through D.I.G. Prisons, Aurangabad.
- 4 State of Maharashtra,
Through I.G. Prisons, Pune.

.. Respondents

...

Mr. Rupesh A. Jailswal, Advocate for Petitioner

Mr. R. D. Sanap, APP for Respondents

...

**CORAM : T.V. NALAWADE &
K.K. SONAWANE, JJ.**

DATED : 9th SEPTEMBER, 2019.

ORAL JUDGMENT : (PER : K. K. SONAWANE, J.) :

The points of controversy in all these petitions are centered on the question of transfer of petitioners-prisoners from Open District Prison, Paithan, to Central Prison, Aurangabad, under the Maharashtra Open Prisons Rules, 1971 (here-in-after, called as, "Rules of 1971", for the sake of brevity), therefore, all these allied petitions are dealt with together for its adjudication on merit by this Common Judgment.

2. The respective petitioners, invoking remedy under Articles 226 and 227 of the Constitution of India, preferred the present Writ Petitions seeking primarily following reliefs :-

- A) To issue appropriate Writ, order or direction and to allow the Petition, and thereby direct the Respondent No.3 to send Petitioner in Open Prison, and, or,
- B) To issue appropriate Writ, order or direction and thereby direct the Respondents to give Open Prison Remission to Petitioner from 29.03.2019 till the date he is again transferred to Open Jail, and, or,

- C) To issue appropriate Writ, order or direction to quash and set aside the acts of Respondents including Registration of offence, if any, and, or.

3. The petitioners are convicted for the offence punishable under Section 302 of the Indian Penal Code (IPC) and they all are sentenced to suffer imprisonment for life. After conviction, initially, the petitioners were lodged in Central Prison, Yerwada as well as Kolhapur, respectively, to serve-out the punishment. Meanwhile, these petitioners were selected for confinement in Open Prison as prescribed under Rule IV of the Rules of 1971. Accordingly, the petitioners were transferred from Central Prison, Yerwada and Kolhapur to Open Prison at Paithan, District Aurangabad.

4. It has been contended that on 22-03-2019 at about 7.30 a.m. to 1.00 p.m., the Vigilance Squad constituted as per direction of the Deputy Inspector General of Prisons, Central Region, Aurangabad, paid surprise visit to Pimpalwadi Shed as well as Barrack No.9 of Open District Prison, Paithan. They frisked the premises of shed and barrack of Open Prison. During search, the members of Vigilance Squad came across with cell phones of Samsung as well as Jio Companies with SIM Cards of Jio and Vodafone Companies accompanied with mobile charger and memory card, etc. It has been alleged that these articles were belonging to petitioner Santosh Shivaji Pawar (WP No. 811

of 2019) and petitioner Habbirao Bhauso Khamkar (WP No. 810 of 2019). The members of Vigilance Cell also recovered one instrument of FM Radio with its charger and currency notes of Rs.1080/- from the petitioner Abbas Ali Sayyad as well as Sayyad Ali Sayyad (WP No. 716 and 717 of 2019). The concerned Jail authority recorded the statements of petitioners-prisoners, immediately after discovery of objectionable articles from their custody. The petitioners conceded about the guilt and confessed that these articles were in their possession. The custody of all these articles were prohibited as per Maharashtra Prison Manual, 1979. Accordingly, the detail report of surprise visit of Vigilance Squad was prepared and forwarded to concerned official of Prison, for further process. The show-cause notices were issued to the petitioners. In response, they filed the reply, but, they denied about possession of all objectionable articles shown recovered from their custody.

5. Meanwhile, the Inspector General of Prison directed the authority of Open District Prison, Paithan to produce all the petitioners before Selection Committee on 30-03-2019 through Video Conference System. It has been stated that the facility of Video Conference System was not available with the authority of Open District Prison, Paithan. Therefore, the petitioners were transferred to Central Prison, Aurangabad, for their production before the Selection Committee through Video Conferencing. The

members of Selection Committee constituted under Rule 3 of the Rules of 1971, considered the allegations nurtured on behalf of Jail authority and after hearing the present petitioners declared them unfit to remain in Open Prison. The Committee recommended for transfer the present petitioners to Close Prison. Accordingly, the matter was referred to the Inspector General of Prison for approval as contemplated under Rule 6 of Rules of 1971. It has been submitted that the Inspector General of Prison on 12-07-2019 accorded the approval and directed the Jail authority to do the needful for confinement of petitioners from Open Prison to Close Prison and filed the report. Meanwhile, pending the recommendations of Selection Committee before the Inspector General of Prisons for approval under Rule 6 of Rules of 1971, the petitioners approached to this Court and filed these petitions to redress their grievances as prayed.

6. The learned counsel Shri. Jaiswal appearing for the petitioners vehemently submits that the act of respondent-Jail authority to transfer the petitioners from Open Prison to Aurangabad Central Prison, is erroneous, illegal and against the principle of natural justice. There was no notice issued to the petitioners nor any opportunity of hearing was given to them. The unilateral action caused miscarriage of justice. He contends that the show-cause notices were issued on 29-03-2019 and prior to any reply from the petitioners, they all were shifted to

Central Prison, Aurangabad. The act of respondent was contrary to the rules prescribed for transfer of prisoners from Open prison to Close Prison. He drawn attention towards the Rules 3, 4 and 6 of the Rules of 1971 and submitted that prior to approval from the Inspector General of Prisons, the petitioners were transferred to Central Prison, Aurangabad. He assailed that there was violation of Rule 6 of the Rules of 1971. Therefore, entire action initiated by the respondent- Jail authority was illegal and required to be quashed and set-aside. According to learned counsel, the petitioners did not commit any prison-offences as defined under the Chapter XI of the Prison Act, 1894. But, the false and baseless accusations were made against them. There were no prohibitory articles recovered from the petitioners. The learned counsel Shri. Jaiswal, in support of his arguments, relied upon the legal ratio laid down by this Court, in the cases of - ***Ravi alias Ravindra Umaji Gunjkar Versus State of Maharashtra and others***, reported in, **2011 ALL MR (Cri) 1904**, ***Dhananjay s/o. Namdeo Kharade Versus State of Maharashtra and others***, reported in, **2019 ALL MR (Cri) 2381**, ***Sadashiv Seena Salian Versus State of Maharashtra*** reported in **2002 (Supp.) Bom. C.R. (Cri.) 923**, and, ***Gajanan Mohanlal Sikchi Versus State of Maharashtra and another Versus State of Maharashtra***, reported in **(1993) 1 BCR 147 : (1992) 94 Bom LR 254**.

7. The learned APP vociferously opposed the contentions propounded on behalf of petitioners and submits that there was no error or illegality committed on the part of respondent-Jail authority. According to learned APP, the prohibitory articles were found in possession of petitioners, in contravention of provisions of Prisons Act, 1894. They committed the prison-offences, therefore, the action was initiated against them. The Vigilance Squad submitted the report, which came to be forwarded to Selection Committee for further process. The Committee given opportunity of hearing to the petitioners through Video Conference facility. The Selection Committee recommended the transfer of petitioners from Open Prison to Close Prison. The Inspector General of Prisons given approval under Rule 6 of the Rules of 1971, and directed the concerned to do the needful. Accordingly, the requisite action will be taken against the petitioners. They all were shifted to Central Prison, Aurangabad, on 30-03-2019, for their production before Selection Committee on Video Conferencing. The learned APP supported the procedure adopted by respondent-Jail authority for the mischief committed by petitioners.

8. We have given anxious consideration to the submissions advanced on behalf of both sides. We have also perused the relevant documents produced on record including the affidavit-in-

reply filed on behalf of respondent-State. The intense scrutiny of the factual score of matter reveals that the relief claimed on behalf of petitioner appear to be pre-mature one. There was no final order of transfer of petitioners from Open District Prison, Paithan to respective Close Prison, for confinement, came to be passed by respondent authority. The transfer of petitioners from Open Prison, Paithan, to Aurangabad Central Prison, only for limited purpose to facilitate the concerned Jail authority to produce the petitioners before Selection Committee through Video Conference Facility. It was an admitted fact that the Video Conference Facility was not available in the premises of Open District Prison, Paithan. Therefore, the transfer of petitioner for specified purpose of Video Conferencing cannot be termed as an final order of their transfer from Open Prison to Close Prison.

9. It would be reiterated that the petitioners were found possessing prohibitory articles during search of Vigilance Squad on 22-03-2019. Thereafter, respondent - Jail authority was directed to produce the petitioners before the Selection Committee through Video Conferencing on 30-03-2019. Accordingly, petitioners were produced before the Selection Committee through Video Conferencing system within premises of Aurangabad Central Jail on 30-03-2019. The show cause notices were also issued to the petitioners. In response to show cause notices, they filed their reply and denied the allegations.

However, it has been alleged that immediately after search, statements of the petitioners were recorded and they confessed about mischief committed by them. According to Jail authority, all relevant documents including recommendation of Selection Committee after hearing petitioners through Video Conferencing on 30-03-2019 were forwarded to the Inspector General of Prisons for approval in view of Rule 6 of the Rules of 1971. The relevant documents adumbrate that the concerned Inspector General of Prisons verified the allegations nurtured on behalf of Jail authority against petitioners, etc., and accorded sanction. The recommendation of the Selection Committee to declare the petitioners unfit for their confinement in Open District Prison, Paithan, came to be approved under Rule 6 of Rules of 1971. It is to be noted that in the approval order dated 12-07-2019, concerned Inspector General of Prisons directed respondent - Jail authority to do the needful and issue order of transfer of the petitioners from Open District Prison, Paithan to respective Central Prisons for confinement to serve out the further punishment imposed on them. In such factual scenario, it cannot be said that respondent Jail authority committed any error or illegality within the ambit of law. In contrast, the procedure adopted by respondent- Jail authority was as per rules meant for transfer of prisoners from Open District Prison to Central Prison.

10. Learned counsel for the petitioners relied upon legal guidelines delineated by this Court in the cases of **Ravi alias Ravindra Umaji Gunjkar** and **Dhananjay s/o. Namdeo Kharade (supra)**, but, unfortunately legal ratio laid down in these judicial precedents could not be made applicable to the facts and circumstances of the present case for the simple reason that respondent Jail authority yet to issue final order for transfer of the petitioners following commission of prison offences on their part. Undisputedly, the Inspector General of Prisons has given approval under Rule 6 of the Rules of 1971 for further process. The rest of the citations do not advance the case of the petitioners any further as factual matrix in the cases are clearly distinguishable and are of no avail to the petitioners.

11. In such peculiar circumstances, we are unable to persuade ourselves to nod in favour of petitioners for exercise of extraordinary jurisdiction in their favour for requisite directions as prayed. It is significant to note that in absence of any transfer order absolute in nature against petitioners, it would be preposterous and incomprehensible to cause any interference in the administrative procedure adopted by respondent- Jail authority. Hence, at this stage, petitions seem to be premature one. It is to be noted that attending circumstances reflect that proceedings of transfer of the petitioners from Open District Prison to Central Prison for commission of prison - offences are

still under consideration of respondent - Jail authority. The proceedings were pending for approval under Rule 6 of Rules of 1971 from higher authority i.e. the Inspector General of Prisons after recommendation of the Selection Committee. A requisite order to that effect is yet to be issued. Therefore, we do not find it just and proper to exercise extra-ordinary jurisdiction in favour of the petitioners. In sequel, petitions being inapt stand dismissed. No order as to costs.

[K. K. SONAWANE]
JUDGE

[T.V. NALAWADE]
JUDGE

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