

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

CRIMINAL WRIT PETITION NO. 1039 OF 2019

Miskin Khan S/o. Kareem Khan,
Convict No. C-35673,
Central Prison, Harsool, Aurangabad.

.. Petitioner

Versus

1 The State of Maharashtra
Through its Principal Secretary,
Home Department, Mantralaya, Mumbai-32.

2 The Inspector General of Police (Prison),
Maharashtra State Pune, Office at Central
Prison Yerwada, Pune, District Pune.

3 The Deputy Inspector General of Police
(Prison), Central Prison, Harsool,
Aurangabad.

4 The Superintendent of Prison,
Central Prison, Harsool, Aurangabad.

5 The Superintendent of Prison,
Open District Prison, Paithan, Tq. Paithan,
District Aurangabad.

.. Respondents

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Mr. M. S. Choudhary, Advocate for Petitioner

Mr. R. D. Sanap, APP for Respondents

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

DATED : 9th SEPTEMBER, 2019.

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

The petitioner, invoking remedy under Articles 226 and 227 of the Constitution of India, preferred the present Writ Petition seeking primarily following reliefs :-

- B) To quash and set aside the impugned action of respondents of transferring the petitioner from respondent No.5's open jail to respondent No.4's closed jail.
- C) To direct the respondents to shift the petitioner forthwith to respondent No.5's open jail, as before 30/3/2019 and to award all such facilities available in law to the petitioner accordingly.

2. The petitioner is convicted for the offence punishable under Section 302 of the Indian Penal Code (IPC) and he is sentenced to suffer imprisonment for life. After conviction, initially, the petitioner was lodged in Central Prison, Nashik Road, Nashik to serve out the punishment. Meanwhile, this petitioner was selected for confinement in Open Prison as prescribed under Rule IV of the Maharashtra Open Prisons Rules, 1971 (here-in-after, called as, "Rules of 1971", for the sake of brevity). Accordingly, the petitioner was transferred from Central Prison, Nashik Road, Nashik to Open Prison at Paithan, District Aurangabad.

3. 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 near main gate of Open District Prison, Paithan. They frisked the premises of Open Prison, Paithan. During search, the members of Vigilance Squad came across with currency notes of Rs.520/-. It has been alleged that the said currency notes were belonging to the petitioner. The concerned Jail authority recorded the statement of petitioner-prisoner, immediately after discovery of objectionable articles from his custody. The petitioner conceded about the guilt and confessed that the said amount was in his possession. The custody of said amount/currency notes was prohibited article 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 notice was issued to the petitioner. In response, he filed the reply, but, he denied about possession of objectionable article shown recovered from his custody.

4. Meanwhile, the Inspector General of Prison directed the authority of Open District Prison, Paithan to produce the petitioner before the 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 petitioner was transferred to Central Prison, Aurangabad, for 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 petitioner declared him unfit to remain in Open Prison. The Committee recommended for transfer the present petitioner 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 petitioner from Open Prison to Close Prison and filed the report. Meanwhile, pending the recommendation of Selection Committee before the Inspector General of Prisons for approval under Rule 6 of Rules of 1971, the petitioner approached to this Court and filed present petition to redress his grievances as prayed.

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

any reply from the petitioner, he was shifted to Central Prison, Aurangabad. The act of respondent was contrary to the rules prescribed for transfer of prisoner 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 petitioner was 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 petitioner 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 him. No prohibitory article was recovered from the petitioner.

6. The learned APP vociferously opposed the contentions propounded on behalf of petitioner and submits that there was no error or illegality committed on the part of respondent-Jail authority. According to learned APP, the prohibitory article was found in possession of petitioner, in contravention of provisions of Prisons Act, 1894. He committed the prison-offences, therefore, the action was initiated against him. 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 petitioner through Video Conference facility.

The Selection Committee recommended the transfer of petitioner 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 petitioner. He was shifted to Central Prison, Aurangabad, on 30-03-2019, for his production before Selection Committee on Video Conferencing. The learned APP supported the procedure adopted by respondent-Jail authority for the mischief committed by petitioner.

7. 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 petitioner 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.

8. It would be reiterated that the petitioner was found possessing prohibitory article during search of Vigilance Squad on 22-03-2019. Thereafter, respondent - Jail authority was directed to produce the petitioner before the Selection Committee through Video Conferencing on 30-03-2019. Accordingly, petitioner was produced before the Selection Committee through Video Conferencing system within premises of Aurangabad Central Jail on 30-03-2019. The show cause notice was also issued to the petitioner. In response to show cause notice, he filed his reply and denied the allegations. However, it has been alleged that immediately after search, statement of the petitioner was recorded and he confessed about mischief committed by him. According to Jail authority, all relevant documents including recommendation of Selection Committee after hearing petitioner 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 petitioner, etc., and accorded sanction. The recommendation of the Selection

Committee to declare the petitioner unfit for his 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 petitioner from Open District Prison, Paithan to respective Central Prisons for confinement to serve out the further punishment imposed on him. 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.

9. In such peculiar circumstances, we are unable to persuade ourselves to nod in favour of petitioner for exercise of extra-ordinary jurisdiction in his favour for requisite directions as prayed. It is significant to note that in absence of any transfer order absolute in nature against petitioner, it would be preposterous and incomprehensible to cause any interference in the administrative procedure adopted by respondent Jail authority. Hence, at this stage, petition seems to be premature. It is to be noted that attending circumstances reflect that proceeding of transfer of the petitioner from Open District Prison to Central Prison for commission of prison - offences is still under

consideration of respondent - Jail authority. The proceeding was pending for approval under Rule 6 of Rules of 1971 from higher authority i.e. the Inspector General of Prisons for 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 petitioner. In sequel, petition being inapt stands dismissed. No order as to costs.

Sd./-

[K. K. SONAWANE]
JUDGE

Sd./-

[T.V. NALAWADE]
JUDGE

MTK