

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1683 OF 2020

Dada @ Praveen Bhalchandra Wani,
Age : 39 years, Occu. Business,
R/o Palasner, Tq. Shirpur,
District Dhule

PETITIONER
(Orig. Accused No.16)

VERSUS

The State of Maharashtra,
for the Nasik Road Central Prison,
Jail Road, Nasik Road, Nasik,
through the Jail Superintendent

RESPONDENT

Mr. Amol S. Gandhi, Advocate for the petitioner
Mr. S.R. Yadav, A.P.P. for the respondent/State

CORAM : V.K. JADHAV AND
MANGESH S. PATIL, JJ.
(VACATION COURT)

DATE : 24.12.2020

ORDER :

The learned A.P.P. waives service of notice for the respondent/
State.

2. Heard both the sides. By consent, this Criminal Writ Petition
is being disposed of finally at the stage of admission itself.

3. This pertains to the transfer of the prisoner-petitioner from
Nashik Road Central Prison to Central Prison, Amravati.

4. The petitioner is an under-trial prisoner in connection with Crime No.I-36/2017, registered with M.I.D.C. Police Station, Ahmednagar for the offences punishable under Sections 304, 328, 34 of the Indian Penal Code read with Sections 65(c), 65(f), 65(d), 68 (b) and 80(1) (2) of the Maharashtra Prohibition Act and under Sections 3(1) (I), (II), 3(2), 3(4), 4 of the Maharashtra Control of Organized Crime Act, 1999.

5. In the backdrop of the outbreak of COVID-19 and the subsequent declaration of the lock-down across the State, the Government has also issued the guidelines/directives. In terms of those guidelines/directives, the Superintendent of Nashik Road Central Prison has taken drastic steps in the prison to curb the infection, if any, amongst the inmates. The petitioner allegedly instigated the other inmates and as a result thereof, the prisoners in jail went on hunger strike with the sole demand to release them on temporary bail in the light of the guidelines issued by the High Power Committee on 11.05.2020 and the subsequent corrigendum thereto.

6. The Superintendent of Nashik Road Central Prison has submitted an application on 26.03.2020 before the Sessions Court, Ahmednagar and on 27.03.2020, the learned Additional Sessions Judge, Ahmednagar has granted permission to shift the petitioner from Nashik Road Central Prison to the Central Prison, Amravati, as prayed for in the application.

7. The learned counsel for the petitioner submits that in terms of the ratio laid down by the Supreme Court in the case of ***State of Maharashtra and others Vs. Saeed Sohail Sheikh etc.; 2012(13) SCC 192***, the learned Additional Sessions Judge should have given an opportunity of being heard to the petitioner before passing the impugned order. The application came to be filed on 26.03.2020 and the learned Additional Sessions Judge has passed the order immediately on the second day i.e. 27.03.2020. Obviously, no notice was given to the petitioner at any point of time and he was not heard before passing the impugned order.

8. The learned A.P.P. appearing for the respondent/State has not disputed this position.

9. In the case of ***State of Maharashtra and others Vs. Saeed Sohail Sheikh etc.*** (supra), relied upon by the learned counsel for the petitioner, the Supreme Court in paragraph No.27 of the judgment has observed that the power exercisable by the court while permitting or refusing transfer is judicial and not ministerial order. It is further observed that the transfer of an under-trial prisoner to a distant prison may adversely affect his right to defend himself but also isolate him from the society of his friends and relations.

10. In paragraph No.39, applying the above principles to the case, the Supreme Court has made the following observations :-

“Applying the above principles to the case at hand and keeping in view the fact that any order that the Court may make on a request for transfer of a prisoner is bound to affect him prejudicially, we cannot but hold that it is obligatory for the Court to apply its mind fairly and objectively to the circumstances in which the transfer is being prayed for and take a considered view having regard to the objections which the prisoner may have to offer. There is in that process of determination and decision-making an implicit duty to act fairly, objectively or in other words to act judicially. It follows that any order of transfer passed in any such proceedings can be nothing but a judicial order or at least a quasi-judicial one. Inasmuch as the trial court appears to have treated the matter to be administrative and accordingly permitted the transfer without issuing notice to the under-trials or passing an appropriate order in the matter, it committed a mistake. A communication received from the prison authorities was dealt with and disposed of at an administrative level by sending a communication in reply without due and proper consideration and without passing a considered judicial order which alone could justify a transfer in the case. Such being the position the High Court was right in declaring the transfer to be void and directing the re-transfer of the undertrials to Bombay jail. It is common ground that the stay of the proceedings in three trials pending against the respondents has been vacated by this Court. Appearance of the undertrials would, therefore, be required in connection with the proceedings pending against them for which purpose they have already been transferred back to the Arthur Road Jail in Bombay. Nothing further, in that view, needs to be done by this Court in that regard at this stage.”

11. In view of the ratio laid down by the Supreme Court as above, we have no hesitation to relegate the matter back to the learned Additional Sessions Judge for deciding the application filed by the respondent – the Superintendent of Nashik Road Central Prison, after giving an opportunity of

being heard to the petitioner-prisoner.

12. In the result, the Writ Petition is partly allowed. The impugned order is quashed and set aside. The learned Additional Sessions Judge, Ahmednagar is directed to decide the application dated 26.03.2020 filed by the Superintendent of Nashik Road Central Prison afresh after giving an opportunity of being heard to the petitioner and such exercise shall be completed as expeditiously as possible, preferably within a period of one month. The Writ Petition is accordingly disposed of.

[MANGESH S. PATIL]
JUDGE

[VK. JADHAV]
JUDGE

npj/CRIWP1683-2020