

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2399 OF 2019

Jeevan s/o Deepak Waghmare (C-6788)]
Age Major, Occ : Convict,]
R/o. C/o Sagar Vasant Jamdhade]
Khot Nagar, Malgaon Road, Miraj]
Tal. Miraj, Dist. Sangli]
At present Central Jail Kalamba]
Kolhapur]..... Petitioner

versus

1] State of Maharashtra,]
Through Inspector General of Prison]
Pune]
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2] State of Maharashtra]
Through D.I.G. Prisons Pune]
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3] State of Maharashtra,]
Through Superintendent]
Open Prison, Visapur,]
Tal. Shrigondha, Dist. Ahmednagar,]
]]
4] State of Maharashtra,]
Through Superintendent]
Central Prison, Kalamba, Kolhapur]..... Respondents.

Mr. Rupesh Jaiswal for the Petitioner.
Mrs. M H Mhatre, APP for the Respondents/State.

CORAM : S. S. SHINDE,
N. J. JAMADAR, JJ

DATE : 03rd September 2021

ORAL JUDGMENT (PER S. S. SHINDE, J)

1 Rule. Rule made returnable forthwith and heard finally with the

consent of the learned counsel appearing for the parties.

2 By this Writ Petition, the Petitioner seeks direction to Respondents/Authorities to send the Petitioner in Open Prison, by quashing and setting aside the order dated 12/04/2017 passed by Respondent No.1 – Inspector General of Prison, Pune. The Petitioner also seeks directions to Respondents/Authorities to give remission for the period from 27/01/2017 till day he is again transferred to Open Prison.

3 The issue that arises for our consideration in this Petition is whether the Respondents/Authorities without giving any show cause notice, without providing any opportunity of hearing and without giving copy of impugned order to the Petitioner, transfer him from Open Prison to Closed Prison.

4 It is the case of the Petitioner that the Petitioner is convicted by the judgment dated 21/02/2006 passed by the learned Sessions Judge, Sangli in Sessions Case No.160 of 2005 for the offences punishable under Sections 302, 307 of the Indian Penal Code and sentenced him to suffer life imprisonment. The Petitioner has undergone near about 13 years of actual imprisonment, and considering the good behaviour, he was transferred from Yerwada Central Prison to Visapur Open Prison on 23/01/2016. It is the case of the Petitioner

that on 22/01/2017 the Respondent No.3 was on leave and the charge was handed over to senior jail officer. On that day, at about 11.15 am the said senior jail officer asked the Petitioner that, why the Petitioner had stopped the work and talked with him in a vulgar language. It is further the case of the Petitioner that, when the Petitioner asked the said jail officer not to use vulgar language, the said jail officer had filed a false complaint against the Petitioner on 22/01/2017 for the offences punishable under Sections 504, 506 of the Indian Penal Code, and again on 25/01/2017 for the offence under Section 353 of the Indian Penal Code with the Belvadi Police Station. Thereafter, the Respondent No.2 on 27/01/2017 had, without following the procedure, directly transferred the Petitioner in closed prison at Yerawada. Thereafter the Respondent No.1 had issued impugned letter dated 12/04/2017 to the Respondent Nos.2 to 4 mentioning therein that as per the decision taken by the selection committee on 24/03/2017 the Petitioner has to be transferred from Open Prison Visapur to closed prison Kolhapur at Kalamba.

It is the case of the Petitioner that he had filed an application under Right to Information Act thereby calling upon the Respondents/Authorities to furnish the information regarding the classification committee, however, it was informed to the Petitioner that since 01/02/2016 to 01/01/2017 no committee was formed. The conduct of the Petitioner in Open Prison was satisfactory and, the Respondent No.3 had proposed his name

for getting special remission for 90 days to Respondent No.1. Hence the Petitioner has filed this Writ Petition for the reliefs as stated herein above.

5 The learned counsel appearing for the Petitioner submitted that while issuing the impugned order/letter dated 12/04/2017, no procedure as laid down in Open Prison Rules was followed by the Respondents/Authorities. It is submitted that the Petitioner was not placed before the committee. It is also submitted that there was no misconduct on the part of the Petitioner during the period from 01/02/2016 to 01/01/2017. In the open prison, Visapur, the Petitioner had satisfactorily completed the work allotted to him. It is further submitted that during the process of transferring the Petitioner from Open Prison, Visapur to Central Prison, Yerawada, the Respondent Nos. 2 and 3 have not followed the procedure as provided under the law. It is submitted that, the Petitioner was transferred from Open Prison Visapur to Central Prison, Yerawada, Pune without giving any notice and without giving any opportunity of hearing and, therefore, there was violation of principles of natural justice. The learned counsel for the Petitioner therefore prays that the Petition may be allowed.

6 The learned APP appearing for the Respondents/State support the impugned order/letter. She submitted that the Petitioner was present before the Jail Selection Committee through Video Conferencing. The Petitioner had

been transferred from Open Prison to Closed Prison, on the basis of the decision taken in the said meeting of the Jail Selection Committee. She, therefore, submitted that the transfer of the Petitioner from Open Prison to Closed Prison was in accordance with the procedure provided under law. The learned APP therefore submitted that the Petition may be dismissed.

7 We have given our due consideration to the submissions made by the learned counsel for the Petitioner and the learned APP for the Respondents/State. With their able assistance we have carefully perused the pleadings and the grounds taken in the Writ Petition and the annexures thereto.

8 In support of her submission that after following proper procedure, the Petitioner was transferred from Open Prison to Closed Prison, the learned APP appearing for the Respondents/State invites our attention to Exhibit-R-I annexed at Page 77 of the Writ Paper Book. We have carefully perused the said document Exhibit-R-I. Exhibit-R-I is the minutes of the meeting of Jail Selection Committee held on 24/03/2017 through video conferencing. It is noted in the said minutes that the charge on the Petitioner with another Prisoner Vijay Pandurang Waghmare was about the misconduct. The Jail Selection Committee had also taken into consideration the act of the Petitioner and the said Vijay about the alleged assault on the jail officer and the

staff, and the FIR being CR No.09/2017 registered against them with Belvandi Police Station. The Jail Selection Committee after considering the misconduct, mis-behaviour of the Petitioner, and the alleged act committed by the Petitioner, came to a conclusion that the Petitioner has infringed the Rules of the Prison Act. According to the Jail Selection Committee, the said offence of the Petitioner is a serious offence and he was found to be guilty. The Jail Selection Committee, therefore, had taken a decision to cancel the facility of Open Prison to the Petitioner and transferred him to Closed Prison. It appears that the said meeting was conducted through video conferencing and, the Petitioner had attended the proceedings before the said committee through video conferencing and, therefore, the contention of the Petitioner that no notice was given to him is not sustainable. The said minutes of the meeting have been signed by the Chairman and the Members of the Jail Selection Committee.

9 It is required to be noted that the said selection committee has considered the case of the Petitioner and reached to the conclusion that the Petitioner is guilty of the alleged act on his part. The said committee has also noted that the conduct of the Petitioner dis-entitles him from seeking any relief much less the reliefs claimed in this Petition. The act attributed to the Petitioner is not a simple act but he had tried to assault the officers and employees working in the open prison by a sharp weapon. It is not necessary to

elaborate the reasons as the competent committee consisting of four members held that the Petitioner is found guilty of misconduct and, therefore, he needs to be kept in closed prison and, his lodgement in open prison stands cancelled. The fact that the Petitioner is convicted for the offence punishable under Section 302 of the Indian Penal Code, cannot be lost sight of.

10 We are of the considered view that impugned order dated 12/04/2017 passed by the Respondent No.1 herein thereby communicating the decision of the committee transferring the Petitioner from Open Prison Visapur to closed Prison, Kolhapur Central Prison at Kalamba, is proper and does not required interference at the hands of this Court in its writ jurisdiction.

11 Since the prayer of the Petitioner to send him in Open Prison is rejected, the question of giving remission from 27/01/2017 till the day he is again transferred to Open Prison, does not arise and the said prayer to also stand rejected.

12 For the reasons stated in the foregoing paragraphs, we are not inclined to grant any relief in favour of the Petitioner. The Writ Petition stands rejected.

[N. J. JAMADAR, J]

[S. S. SHINDE , J]