

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

979 CRIMINAL WRIT PETITION NO.239 OF 2021

MANOJ SHIVAJIRAO PATIL (C-227)
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

.....
Advocate for Petitioner : Mrs. Manjushree V. Narwade h/f Mr. V. P.
Narwade
APP for Respondents: Mr. S.J. Salgare
.....

**CORAM : V. K. JADHAV AND
SANDIPKUMAR. C. MORE, JJ.
DATED : 25th FEBRUARY, 2022**

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. By way of this writ petition, the petitioner-convict is seeking directions to respondent No.2 to count the period from March, 2013 to March, 2017 as the period of the petitioner being open prisoner and to give him the benefit of remission for that period.
3. Learned counsel for the petitioner submits that though the petitioner was selected to transfer to open prison in the month of March, 2013 but his transfer was not made in the month of March, 2013 nor he was communicated any reason thereof. The petitioner was transferred to open prison Visapur, Tq. Shrigonda, District Ahmednagar in the month of March, 2017. Learned counsel submits that as per the chart of remission of sentence for the close prisoners

and for the open prisoners, the petitioner can get 7 days remission for 1 month and for 1 year the same will come to 84 days of remission. Learned counsel submits that even though the petitioner was found eligible to be transferred to open prison way back in the year 2013, however, he was not transferred to the open prison for one or the another reason and the petitioner cannot be held responsible for that.

4. Learned A.P.P. for the respondents submits that as per the Open Prisons Statutory Rules which are known as "Maharashtra Open Prisons Rules 1971", prior to 2015, in terms of sub-rule (v) of Rule 5 of the said Rules, the selection committee shall select such prisoners as are eligible for being confined in open prison under Rule 4 and submit a list of selected prisoners in order of seniority for approval of Additional Director General of Police and Inspector General of Prisons. On the said list being approved, the selected prisoners shall as soon as possible and subject to there being vacancies be transferred for confinement to open prison. Learned A.P.P. submits that by notification dated 1.12.2015 there is substantial change in sub-rule (v) of Rule 5, as it is amended to effect that the selected prisoners shall as soon as and subject to there being vacancies be transferred for confinement in the open prison.

5. Learned A.P.P. for the respondents submits that in the instant case, there was no vacancy in the open prison in the month of

March, 2013. The selection committee for open prison after due process selected 1727 prisoners as eligible for open prison. Subsequently, office of the Additional Director of General of Police and Inspector General of Prisons and Correctional Services, Maharashtra State, Pune released the seniority list as per Rules wherein the name of the petitioner was at Sr. No.1040 in the said seniority list. Learned A.P.P. submits that after the seniority list for open prisoners is released, the prisoners came to be transferred to various open prisons across the State of Maharashtra depending upon the requirement, vacancies at various open prisons and transferred them at the nearest open prisons from their home town. Learned A.P.P. submits that from 2013 to 2017 lesser number of open prisons were operational and hence lesser number of prisoners were transferred to the open prisons from the seniority list. In terms of notification dated 1.12.2015 and more particularly amendment to sub-rule (v) of Rule 5, the petitioner is entitled to claim the benefit of remission being transferred to open prison only after there being vacancies and confinement in open prison in consequence thereof.

6. We have carefully gone through the pleadings of the petition and the affidavit in reply filed on behalf of the respondents. We have also gone through the provisions of Maharashtra Open Prisons Rules 1971 and amendment thereto effected in terms of notification dated 1.12.2015.

7. In terms of provisions of sub-rule (v) of Rule 5 of Maharashtra Open Prisons Rules 1971, on the list being approved, the selected prisoner shall as soon as possible and subject to there being vacancies be transferred for confinement in the open prison. Sub-rule (v) of Rule 5 of the Maharashtra Open Prisons Rules 1971 (pre amendment) is reproduced herein below:-

“5. (i) to (iv)

(v) The Selection Committee shall select such prisoners as are eligible for being confined in open prison under Rule 4 and submit a list of selected prisoners for the approval of the Inspector General of Prisons. On the list being approved, the selected prisoners shall as soon as possible be transferred for confinement in the open prison.”

8. In the year 2015, the said Rules came to be amended and as per the notification dated 1.12.2015, it is titled as Maharashtra Open Prisons (Amendment) Rules 2015. The Maharashtra Open Prisons Rules 1971 referred to as principal Rules. In Rule 5 of the principal Rules, for sub-rule (v), the following sub-rule came to be substituted:-

“(v) The Selection Committee shall select such prisoners as are eligible for being confined in open prison under rule 4, and submit a list of selected prisoners in order of seniority for the approval of the Additional Director General of Police and Inspector General of Prisons and Correction Centres. On the list being approved, the selected prisoners shall as soon as

possible and subject to there being vacancies be transferred for confinement in the open prison.

9. In the instant case, in the month of March, 2013, the selection committee for open prisons after the due process selected 1727 prisoners as eligible for open prison and thereafter the seniority list as per Rules came to be released. Admittedly, the petitioner was at Sr. No. 1040 in the said seniority list. It further appears that even the seniority list was released, however, the prisoners came to be transferred to various open prisons across the State of Maharashtra depending upon the requirements and vacancies at various open prisons. A care was also taken to transfer them to the nearest open prisons from their home town. It further appears that from 2013 to 2017 lesser number of open prisons were operational and hence lesser number of prisoners were transferred to the open prisons from the seniority list.

10. Apart from above explanation from the respondent authorities, in terms of amended sub-rule (v) of Rule 5 of Maharashtra Open Prisons Rules 1971, the selected prisoners are required to be transferred to the open prison subject to there being vacancies for confinement in the open prison. It appears that vacancy was found in the year 2017 and accordingly the petitioner was transferred to open prison Visapur, Tq. Shrigonda, District Ahmednagar in the month of March, 2017. In terms of Rule 7, the prisoner in the open

prison is entitled for ordinary remission at the scale mentioned in the table of Rule 7. In terms of amended sub-rule (v) of Rule 5, even if the list of prisoners being transferred to open prisons is approved, the selected pensioner shall be transferred for confinement in the open prison subject to there being vacancies. In view of the same, in our considered opinion, the prisoner gets right to claim remission in terms of Maharashtra Open Prisons Rules 1971 only after he being transferred for confinement in the open prison and not merely on the basis of select list.

11. In view of the above observations, we find no substance in this criminal writ petition. Hence, the following order:-

O R D E R

Criminal writ petition is hereby dismissed.

(SANDIPKUMAR. C. MORE, J.)

(V. K. JADHAV, J.)

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