

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

CRIMINAL WRIT PETITION NO.919 OF 2022

Asma W/o Adil Chaus,
Age-29 years, Occu:Housewife,
R/o-2-1-55, Behind Balak Mandir,
Chaus Colony, Aurangabad

...PETITIONER

VERSUS

- 1) The State of Maharashtra,
Through Secretary, Home Department,
Mantralaya, Mumbai,
- 2) Section Officer,
Home Department,
Mantralaya, Mumbai,
- 3) Inspector General of Prisons,
Pune,
- 4) Superintendent,
Harsul Jail, Aurangabad,
- 5) Police Commissioner,
Aurangabad.

...RESPONDENTS

...
Mr.Rupesh A. Jaiswal Advocate for Petitioner.
Mr.R.V. Dasalkar, A.P.P. for Respondent Nos. 1 to 5.
...

**CORAM: SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE OF RESERVING ORDER : 22nd SEPTEMBER 2022

DATE OF PRONOUNCING ORDER : 21st OCTOBER 2022

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. The petitioner, who is wife of a detenu, seeks to challenge order dated 2nd June 2022 passed by respondent No.2 and further prays for directions to be given to the respondents to transfer her husband from Nagpur Central Prison to Aurangabad Central Prison.

2. Petitioner is the wife of Adil Bin Hamad Chaus, who has been detained under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons, Video Pirates, Sand Smugglers and Persons Engaged in Black Marketing of Essential Commodities Act, 1981 (for short "MPDA Act"). The order of detention was passed on 8th November 2021 and it is for one year. It has been stated that abruptly respondent No.2 has transferred Adil, husband of the petitioner, from Aurangabad Central Prison to Nagpur Central Prison without an opportunity of hearing given to him. The distance between Aurangabad to Nagpur is more than 450 Kms. and it is not possible for the petitioner to go to Nagpur to meet

her husband. The father of Adil is also 82 years old and suffering from various diseases. Such transfer is against the provisions of law and violative of the fundamental rights even to the prisoner and therefore, such order deserves to be set aside and he should be brought back to Aurangabad Central Prison.

3. Heard learned Advocate Mr. Jaiswal for the petitioner and learned APP for the respondents.

4. It has been vehemently submitted on behalf of the petitioner that the impugned order dated 2nd June 2022 would clearly show that no opportunity was given to Adil to put forth his say. In ***State of Andhra Pradesh vs. Challa Ramkrishna Reddy, 2000 AIR(SC) 2083***, it has been held that, a prisoner whether convict, under trial or detenu, have all fundamental rights including right to life and other basic human rights. It has been further held that, the State has no authority to violate such rights, as the prisoner, be he a convict or under trial or a detenu, does not cease to be a human being, even when lodged in the jail, he continues to enjoy all his fundamental rights. Learned Advocate for the petitioner has further relied on the decision in ***Sunil Batra (II) vs. Delhi Administration, (1980) 3 SCC 488***, as well as decision in ***A.K. Roy and others vs. Union of***

India and another, AIR 1982 SC 710, lays down that distant place of transfer be avoided even for a detenu or prisoner. Further reliance has been placed on the decision in ***M/s. Kranti Associates Pvt. Ltd. and another vs. Sh. Masood Ahmed Khan and others, 2010(6) ALL MR 992***, wherein it is held that, every order should be speaking order. Further, in ***Suryakant @ Mukesh Laxman Dhotre vs. the Commissioner of Police, Solapur and others, 2018 ALL MR (Cri) 2004***, it has been held that in detention matter procedural safeguard's compliance is very necessary.

5. It has been further argued on behalf of the petitioner, after considering the affidavit-in-reply filed on behalf of the respondents, that two cases are stated to have been filed against Adil after his detention order, one is under Section 8, 22(a), 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "NDPS Act") and under Section 186 of the Indian Penal Code bearing Crime No.78 of 2022, and another is N.C. Complaint bearing No.152 of 2022 under Section 506 of the Indian Penal Code with Harsool Police Station, Aurangabad. Even in those cases also right to speedy justice is available to Adil and his abrupt transfer to Nagpur Central Prison is violative of his fundamental rights. It has been contended by the prosecution /

State that report was given to the Government about 3½ months prior to the order. If the State is acting such belatedly, then it cannot be stated that the State is protecting the rights of citizens. Even if it is accepted for the sake of arguments that Adil had misbehaved with the jail authorities, yet the Prison Act makes provision for the same and he can be punished. Reliance has been placed on ***Gajanan Eknath Murle vs. State of Maharashtra, 2008 All MR (Cri) 1048***, wherein it has been held that in case a prisoner commits a prison offence, the Superintendent of Police before proposing punishment is expected to give show cause notice to the prisoner and after considering the reply, if any, and after giving personal hearing to the prisoner pass appropriate order either accepting the explanation and exonerating the prisoner for committing alleged prison offence or propose punishment considering the cause shown by the petitioner. Learned Advocate for the petitioner, therefore, prayed for allowing the Petition on the basis of the prayers.

6. Learned APP has strongly opposed the Petition and relied on the affidavit-in-reply filed by the Superintendent, Central Prison, Aurangabad, Smt. Aruna Arjunrao Mugutrao. It has been stated that Adil was arrested by Begampura Police Station,

Aurangabad in Crime No.505 of 2021 under Section 353, 504, 506 read with Section 34 of the Indian Penal Code on 3rd October 2021. Thereafter, as per the order passed by the Commissioner of Police, Aurangabad on 8th November 2021, he was detained under the provisions of MPDA Act. The order was served on him and the compliance has been made. The period of detention is for 12 months from the date of detention. It is stated that detenu was not abiding the rules and regulations of prison and he was misbehaving with medical officer, prison officers and guarding staff. Report was submitted to the learned Judicial Magistrate First Class-2, Aurangabad in respect of the same. Non cognizable offence under Section 506 of the Indian Penal Code had also come to be registered against Adil and while he was under escort taken to Court, he was found along with one lady, misbehaving with the police escort. Though the lady escaped, the detenu was found possessing narcotic drug. Under such circumstance, the report was submitted to the Under Secretary, Home Department (Special), Mantralaya, Mumbai on 18th February 2022 with a request to change the detention place. Accordingly the order has been passed.

7. Learned APP has taken us through the documents in the form of the report that was submitted against Adil, First

Information Reports those have been lodged against him, especially the First Information Report under the NDPS Act. It appears that Adil, husband of the petitioner was taken to Court for his production in police escort, yet it is stated that narcotic drug was found in his possession. Taking into consideration such activities the place of detention of Adil has been changed.

8. At the outset, there cannot be disagreement that even the prisoners have fundamental rights. The ratio in ***State of Andhra Pradesh vs. Challa Ramkrishna Reddy, 2000 AIR(SC) 2083***, (supra), by the Apex Court is also reiterated in subsequent decisions of the Apex Court and the State is required to honour such fundamental rights. Of course, those fundamental rights are not absolute rights, those come with restrictions. Under such circumstance it is now required to be seen as to whether the action taken by the State in this case was justified. It has been specifically stated by the learned Advocate for the petitioner that the petitioner or the detenu Adil do not want to challenge the said detention order under MPDA Act. It is the order which has been passed for the transfer of place of detention dated 2nd June 2022 that has been challenged in this Petition. In this respect, the documents which have been produced along with the affidavit-in-reply on behalf of the State

would show that the affiant Aruna Mugutrao filed report about the alleged misbehaviour of detenu Adil on 18th February 2022, yet the action has been taken by the State on 2nd June 2022. There is no explanation on behalf of the State, as to why such belated action is taken if at all the acts of detenu were so serious in nature. At least after about four months the action has been taken. This Court agrees with the submission that an opportunity of being heard ought to have been accorded to Adil by the State before passing the impugned order. Further, even if such transfer was in the interest of the State, yet the State could not have given a go-by to the ratio laid down in ***Sunil Batra (II) vs. Delhi Administration***, (supra), as well as in ***A.K. Roy and others vs. Union of India and another***, (supra). There are other prisons nearby Aurangabad wherein the detenu could have been detained or placed. That option was never explored by the State. Impugned order is also not a speaking order. It does not make it clear as to why that decision was taken. It also does not refer to the report that was submitted by affiant Aruna Mugutrao. No doubt the place of detention can be changed by the State but before that the principles of natural justice will have to be adhered to.

9. We are aware about the fact that in spite of the fact that Adil was under escort, offence under NDPS Act came to be registered against him, so also already the offence under Sections 353, 504, 506 read with Section 34 of the Indian Penal Code is pending against him, therefore, it will not be proper to bring him back to Aurangabad Central Prison, as the reports filed by the medical officer, prison officers and guarding staff would also state about his behaviour. No doubt there is power with the Superintendent of Jail to punish such misbehaving prisoner, yet we need not wait till the procedure ends. Under this circumstance, it would be appropriate to direct respondent Nos.1 and 3 to transfer Adil to Jalna District Prison, Jalna, which is near to Aurangabad. With these observations, following order is passed:

ORDER

(I) Writ Petition stands partly allowed.

(II) The impugned order dated 2nd June 2022, changing the place of detention of detenu Adil Bin Hamad Chaus to Nagpur Central Prison, Nagpur in place of Aurangabad Central Prison, Aurangabad, stands set aside to the extent of place.

(III) Respondent Nos.1 and 3 are directed to transfer Adil Bin Hamad Chaus to Jalna District Prison, Jalna.

(IV) Compliance of this order be made within a period of ONE WEEK of the date of this order.

(V) Parties to act upon authenticated copy of this order.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/OCTP22