

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3143 OF 2022

1. Ramesh Bhagwan Mane
2. Amol Subhash Vaykule
3. Suraj @ Sonya Prakash Mane
4. Dipak Nagnath Mane ...Petitioners

Versus

The State Of Maharashtra And Anr. ...Respondents

....

Mr. Swaraj S. Jadhav, Advocate for the Petitioners.

Mr. S. R. Agarkar, APP for the Respondent – State.

Mr. Pravin Shivaji Sirsat (PSI) Solapur (Rural) Police Station, Present.

....

CORAM : PRAKASH D. NAIK, J.
DATE : 29th AUGUST, 2022.

PER COURT:

1. The grievance of the petitioners in this petition is that the learned Sessions Judge, Barshi has allowed the application preferred by the Tahsildar Barshi for shifting the petitioners from Sub-Jail Barshi to District Jail, Solapur.

2. The petitioners are facing prosecution registered vide C.R. No.590 of 2018 registered with Barshi Police City Police Station, Solapur Rural for offences punishable under Sections 302 324, 323, 143, 147, 148, 149, 504 & 506 r/w Section 34 of Indian Penal

Code (for short “IPC”). The proceedings are pending before the Court additional District and Sessions Judge, Barshi.

3. Tahsildar Barshi has preferred an application before the Sessions Court on 9th March, 2022 stating that the petitioners are detained at Sub-Jail Barshi and for want of space at the Sub-Jail, they may be transferred to District Jail, Solapur. The learned Sessions Judge passed a cryptic order stating ‘permission granted as prayed’ on 15th March, 2022. Being Aggrieved by the said order, the petitioners had preferred application before the same Court and prayed that the order dated 15th March 2022 may be recalled.

4. The Police Inspector, Barshi City Police Station has also filed an application before the Court of Sessions (Exhibit – 184) stating that the petitioners /accused are detained at Sub-Jail Barshi and that the relatives are visiting them. The video in that regard has been made viral and there is likelihood of breach of law and order. The said application was preferred on 26th March, 2022 and the learned Sessions Judge has also passed an order on that application/report observing that the accused be transferred to Solapur Jail. The application before the Sessions Court was rejected by order dated 5th July, 2022. The Jailor Sub-Jail Barshi filed the report before the Sessions Court vide Exhibit – 198, stating

that the complainant has been complaining about the petitioners/accused being detained at Sub-Jail Barshi. The complainant is threatening that action would be taken against the Jailor and the prison administration.

5. Learned counsel for the Petitioners submitted that the impugned orders are contrary to law. No reasons were assigned while passing the said orders. The orders were passed without providing opportunity of hearing to the petitioners. The report of Jailor dated 30th April, 2022 is contrary to the application dated 9th March, 2022. Reliance is also placed on the decision of this Court in the case of **Saeed Sohail Sheikh S/o Sohail Mehmood Sheikh & Others V/s. The State of Maharashtra, 2009 0 AllMR 2423**, wherein it was observed that the concerned judge, who had been approached with the letter by the Jail Superintendent should either have allowed the application or dismissed the application after hearing prisoner.

6. Learned APP has placed on record the letter dated 20th May, 2022 issued by Superintend of Solapur District Prison, stating that, on account scarcity of space in the jail, the prisoners should not be detained at Solapur jail. The said letter is taken on record and marked as 'X' for identification.

7. I have perused the documents on record. The application dated 9th March, 2022 was preferred by the Tahsildar Barshi before the Court of Sessions for transferring the petitioners to District Prison Solapur, on the ground that there is scarcity of space at the Sub-Jail, Barshi. The learned Sessions Judge has passed cryptic order stating that the 'permissions is granted'. The learned Sessions Judge has taken cognizance of the report submitted by the Police Inspector, Barshi Police Station and passed the separate order dated 28th March, 2022 directing the transfer all the petitioners to Solapur Jail. The application preferred by the petitioners before the Sessions Court has been rejected by order dated 5th July, 2022. The Solapur District Jail has sent report, stating that there is no space at Solapur District Jail, where the petitioners are directed be transferred. The learned Sessions Judge ought not to have passed the orders mechanically by transferring the petitioners for Barshi Prison to Solapur Jail. In these circumstances, I pass the following order :

ORDER

- i. Writ Petition No.3143 of 2022 is allowed;
- ii. Impugned orders dated 15th March, 2022 vide Exhibit – 183 and 28th March, 2022 vide Exhibit – 184 passed by the

Additional District and Sessions Judge Barshi transferring petitioners from Sub-Jail Barshi to District Jail Solapur are set aside.

iii. In the event, applications for transfer of jail are preferred before the concerned Court, it is expected that the Court shall adjudicate such applications in accordance with law and on merits without passing orders mechanically.

iv. The petitioners shall not be transferred to District Prison Solapur.

v. Writ Petition is disposed off accordingly.

(PRAKASH D. NAIK, J.)