

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

CRIMINAL WRIT PETITION NO.211 OF 2023

. Kaushik Baldev Rajgour
Aged: 43 years, Occu.: Nil,
Residing at C/603, 604, Sanskruti,
Apartment, Anand nagar, Opp.
Shardashram Society, Dahisar (E),
Mumbai -400068.
(now confined at Nashik Road Central
Prison, Nasik Road as Prisoner No.
C-12619 ..Petitioner

VERSUS

1. The State of Maharashtra
(Through the office of Public
Prosecutor, High Court,
Aurangabad)
2. The Superintendent,
Nasik Road Central Prison,
Nasik Road.
3. The D.I.G. (Prison)
Central Region, Harsul,
Aurangabad. ..Respondents

...
Advocate for Petitioner : Mr.N.N.Gawankar h/f. Mr.R.A.Jaiswal
APP for Respondents-State : Mr.M.M.Nerlikar
...

**CORAM : MANGESH S. PATIL &
ABHAY S. WAGHWASE, JJ.**

DATE : 28 April 2023

ORDER (ABHAY S. WAGHWASE, J.) :-

. Petitioner, a convict under the Maharashtra Control of Organised Crime Act, 1999 (for short “the MCOC Act”), is questioning the order of his transfer from Nashik Central Prison to Aurangabad Central Prison i.e. order passed by the D.I.G., Prisons, Aurangabad dated 15-12-2022.

2. Learned Advocate for the petitioner appries us about the background in which the petitioner came to be lodged in Nashik Central Prison, i.e. by pointing out that, petitioner was tried by the Special MCOC Court and he came to be convicted for offence under Section 120-B read with Section 307 of the Indian Penal Code (IPC) and Sections 3(1)(ii), 3(2), 3(4) of the MCOC Act, and so is currently lodged in Central Prison at Nashik. That, since April 2021, he is suffering sentence in Nashik Central Prison and his conduct is unblemished. It is pointed out that, all of a sudden petitioner was summoned in the Judicial Department of the Nashik Central Prison and was informed about orders being passed by respondent no.3 thereby transferring him from Nashik Central Prison to Aurangabad Central Prison.

3. Learned Advocate for the petitioner would strenuously submit that there was no situation which warranted abrupt transfer. That inspite of demand, copy of impugned order was not served on him on the ground of want of provision. It is submitted that respondent authorities had not made him known the grounds which prompted the authorities to transfer him. That, he ought to have been heard before passing order. That, there was even no show cause notice by the respondent authorities and therefore, it is submitted that petitioner, though a convict having bestowed with fundamental rights, is deprived of the same. There is apparent violation of principle of natural justice. For all above reasons, impugned order is sought to be quashed and set aside.

4. While opposing the prayers raised herein, learned APP, on the strength of affidavit filed by respondent no.2 – Superintendent, Nashik Prison, would submit that the petitioner is lodged in Nashik Central Prison by virtue of order of conviction under the MCOC Act. He brought to our notice the strength of the prisoners currently lodged under various serious offences and submitted that there is already overcrowding in the Nashik Central Prison. According to him, prison authorities have also noticed some suspicious activities of

petitioner, which are prejudicial to the interest of internal security of the prison and even other inmates including himself. It is pointed out that, in view of above conduct of prisoner, proposal was forwarded to the D.I.G., respondent no.3, who after subjective satisfaction, was pleased to allow the proposal thereby ordering transfer of petitioner from Nashik Central Prison to Aurangabad Central Prison. It is pointed out that infact order is passed long back, however, for want of police escort, transfer was not effected. Lastly, it is submitted that said action has been taken for administrative reasons and as such petitioner has no right to choose the prison for suffering imprisonment. Thus, he prays to dismiss the petition.

5. In this petition, we are called upon to address the controversy arising out of proposed transfer of petitioner from one prison to another prison. There is no dispute that the petitioner is a convict under the MCOC Act and by virtue of the same, he came to be lodged at Nashik Central Prison since 02-04-2021. It seems that Nashik Central Prison authorities put up a proposal before respondent no.3 – the D.I.G., Prison, Aurangabad, for transfer of petitioner from Nashik to Aurangabad. It further seems that said proposal was dispatched on 26-10-2022 which is at Exh.2 and the said proposal was accepted by

respondent no.3 on 15-12-2022. Annexures placed with the affidavit go to show that, communications were made *inter se* between prison authorities for arranging police escort for transfer of petitioner to Aurangabad. However, physical transfer of petitioner from Nashik to Aurangabad has not been effected yet.

6. Here, principal grounds of challenge are **firstly** failure to issue show cause notice prior to impugned order and **secondly** denial of principles of natural justice. According to learned APP, in case of transfer of a prisoner from one prison to another, there is no provision of putting a prisoner to notice before passing any order.

Here, it needs to be noted from the cause title of the petition that petitioner is a resident of Mumbai. Undisputedly after conviction he was lodged in Nashik central prison. Learned Advocate for petitioner has pointed out and it is also stated in the petition that he has preferred an appeal against order of conviction and the same is pending before the Principal Seat.

Respondent authorities here seem to be concerned with some suspicious activities and are apprehending breach of internal security of the prison. However, on court query, learned APP could not respond satisfactorily by quoting the instances which impelled the

prison authorities to entertain suspicion about any detrimental activities allegedly indulged into by petitioner. There is no speaking order or noting by way of record narrating the nature of activities which were found to be suspicious. Therefore, in our views, assertion of State about threat to internal security has no foundation.

7. No doubt, though petitioner is a convict, he is not denuded or stripped of fundamental rights which are available to other citizens. By numerous judgments rights of prisoners have been endorsed, acknowledged and protected as and when required.

In the case of *Peoples' Union for Democratic Rights (PUDR) Vs. Union of India; 2015 SCC OnLine All 143*, compliance of principles of natural justice has been emphasized. Likewise, in the case of *Maneka Gandhi Vs. Union of India; (1978) 1 SCC 248*, while discussing various facets of aspect of "dignity" of a human being, i.e. both physical and mental welfare are given due weightage. Similarly, even administrative law fairly acknowledges the doctrine of '*audi alteram partem*'.

Further there are other landmark cases upholding basic and fundamental rights of prisoners and the few amongst them are *Sunil Batra vs. Delhi Administration; (1978) 4 SCC 494*, *Sunil Batra (II)*

vs. Delhi Administration; (1980) 3 SCC 488, Nilabati Behera vs. State of Orissa (1993) 2 SCC 746; and State of Andhra Pradesh vs. Challa Ramkrishna Reddy; 2000 AIR (SC) 2083.

8 Taking into consideration the above legal position and the fact situation in this case that petitioner is a resident of Mumbai, he must be having relatives meeting him by virtue of visitation rights. Even his appeal against conviction is pending decision before the Principal Seat. In spite of so he is sought to be shifted to a place which is roughly over 200 kms. away. Therefore, his personal interest has been overlooked. In our opinion, he too deserves an opportunity of being heard before being transferred to a place which is far away from a place where he is currently lodged. Admittedly, he has not been heard before passing impugned order.

In the light of above discussion, on the sole ground of denial of Principles of natural justice before passing impugned order, petition deserves to be partly allowed. We clarify that only after giving due notice and on hearing petitioner, respondent authority shall be free to take its own decision on merits. Hence, the following order :

ORDER

(I) Criminal Writ Petition is partly allowed.

(II) Order of transfer dated 15-12-2022 passed by respondent no.3 – The D.I.G. (Prison), Central Region, Aurangabad, is hereby set aside.

(III) The respondent authorities are directed to follow due procedure of law i.e. to hear the petitioner regarding proposed transfer and then take appropriate decision.

(**ABHAY S. WAGHWASE**)
JUDGE

(**MANGESH S. PATIL**)
JUDGE