

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.538 OF 2022
ALONG WITH
INTERIM APPLICATION NO.3830 OF 2022

Babalu Ramdas Shinde (Through Jail) .. Petitioner-Applicant

Vs.

The State of Maharashtra .. Respondent

Ms. Janhavi Karnik, Appointed Advocate, for the Petitioner-Applicant.

Ms. S.D. Shinde, APP for the Respondent-State.

CORAM : SUNIL B. SHUKRE & M.M. SATHAYE, JJ

DATE : 27TH MARCH, 2023.

ORAL JUDGMENT : { Per Sunil B. Shukre, J. }

1. Heard Appointed Advocate for the petitioner-applicant and learned APP for the respondent-State.

2. The words "*Solapur District Court*" appearing in line nos.2 and 3 of the order dated 20th March 2023 are substituted by the "**Pandharpur Court**". The order dated 20th March 2023 be corrected accordingly.

3. RULE. Rule made returnable forthwith. Heard finally by consent of learned counsel for the petitioner-applicant and learned APP for the respondent-State.

4. The affidavit-in-reply dated 18th March 2023 filed on behalf of the Prison Authorities indicates that there are certain difficulties, which are practical in nature and which cannot be surmounted by them unless they keep detained the petitioner at Kalamba Prison of Kolhapur. These difficulties are acceptable and they had made the Prison Authorities take a policy decision to transfer petitioner from Solapur Prison to Kolhapur Prison. This policy decision having been based upon reasonable material available with the Prison Authorities, in our view, cannot be interfered with.

5. At the same time, we are also of the view that howsoever correct the policy decision may be, the decision must not have its adverse impact upon the right of defence of the petitioner. Now it is the contention of the petitioner that because he is detained in Kolhapur Prison, his lawyer, who is from Solapur, is unable to travel the long distance between the two cities and the result is that the petitioner is unable to give effective instructions to his lawyer so necessary for building up his defence before the trial court. According to learned counsel for the petitioner, the Advocate of the petitioner is aggrieved by the fact that the petitioner is also not physically produced before the trial court at Pandharpur and because of that, the petitioner is unable to hold consultations with his Advocate. The difficulty so expressed by the petitioner is worthy of consideration and we are of the view that it must be properly considered by the trial court.

6. Accordingly, we direct the trial court to consider the request of the

petitioner for his physical production before Pandharpur Court on every date fixed by it, barring such occasions where there are justifiable reasons for not producing physically the petitioner. But, on all other occasions, the trial court must consider necessity of physical presence of the petitioner before it on the dates fixed in the matter, so that the right of the petitioner to defend himself effectively does not get prejudiced.

7. With these directions to the trial court, we dispose of the petition. Rule is made absolute in the above terms.

8. Interim Application is accordingly disposed of.

[M.M. SATHAYE, J.]

[SUNIL B. SHUKRE, J.]