

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

WRIT PETITION NO.248 OF 2023

Kamlakar S/o Devidas Patil

..Petitioner

Versus

The State of Maharashtra & Ors.

..Respondents

Mr. Rupesh A. Jaiswal, for the Petitioner.

Smt. S. D. Shinde, APP for the Respondents/State.

**CORAM : NITIN W. SAMBRE &
SHARMILA U. DESHMUKH, JJ.**

DATE : 15th JUNE, 2023

PC.

1. The prayer of the petitioner for transferring him to open prison is informed to be under consideration as the competent committee dealing with the same appears to be considering the claim of the petitioner as could be inferred from paragraphs 12 and 13 of the affidavit filed by Superintendent, Kolhapur Central Prison, Kolhapur.

2. In this background, when confronted, learned APP informs that the petitioner's name was permanently removed from the remission register as after he was released on parole for 30 days on 16.06.2009, he failed to surrender. As such, he was arrested by police on 31.03.2010. According to learned APP the aforesaid conduct of the petitioner has prompted this authority to form an

opinion that the petitioner, a prisoner is at an escape risk from the custody and as such cannot be transferred.

3. We have appreciated the said submissions.

4. The fact remains that after the petitioner was arrested having jumped parole on 31.03.2010, the jail authorities have sanctioned him further parole on 13.10.2015, 05.07.2017, 18.07.2018 and 23.05.2020.

5. The fact remains that during the aforesaid period, once i.e. on 23.05.2020, the petitioner has voluntarily surrendered late by thirteen days. The aforesaid act on the part of the respondent authorities of granting parole to the petitioner subsequent to permanently removing him from remission register prompts this Court to believe his earlier conduct of not surrendering by 14th August, 2009 has not been seriously considered as impediment in subsequent release on parole.

6. In the aforesaid background, we deem it appropriate to direct the committee to consider the petitioner's shifting to open prison without being influenced by late surrender when he was released on 16.06.2019.

7. Let the aforesaid decision to communicate to the petitioner expeditiously.

8. The decision on the shifting of the petitioner to the open prison be taken within period of three months.
9. The petition as such stands disposed of.

[SHARMILA U. DESHMUKH, J.]

[NITIN W. SAMBRE, J.]