

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 516 OF 2023**

Noor Mohammad Alihasan Malik

... Petitioner

V/s.

The State of Maharashtra & Ors.

... Respondents

Mr. Mujahid S. Ansari for Petitioner.

Ms. M.H. Mhatre, A.P.P. for Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D. NAIK, JJ.**

DATE : 28th February 2023.

P.C. :

1. The Petitioner has been held to be ineligible for his transfer to Open Prison as he has been convicted under Section 302 of Indian Penal Code (IPC) and is sentenced to suffer life imprisonment and also under Section 397 of IPC and sentenced to suffer 7 years of rigorous imprisonment by the Judgment and Order dated 31st July 2009 passed by the Additional Sessions Judge, Ratnagiri. Both the substantive sentences are directed to run concurrently. He has been held to be ineligible for transfer to Open Prison on the principal ground that, he has been convicted under Section 397 of IPC.

2. Learned A.P.P. on instructions from Superintendent, Nashik Road Central Prison, Nashik, submitted that, in pursuance of Circular dated 10th February 2023 issued by the Additional Director General of Police and

Inspector General of Prisons, Maharashtra State, the proposal of the Petitioner will be submitted before the concerned Committee within a period of one month from today and after the Committee takes a decision on it, necessary course of action will be adopted to transfer the Petitioner to Open Prison, if he is found eligible.

3. This Court vide Judgment dated 12th August, 2010 passed in Criminal Writ Petition No.362 of 2010 and other connected petitions has observed that, in a case, where the convict has been sentenced for the offences punishable under Sections 392, 394 or 397 of Indian Penal Code alongwith the offence punishable under Section 302 of Indian Penal Code and the sentences are directed to run concurrently, he will be eligible for admission to the open prison on completion of the sentences so awarded under Sections 392, 394 or 397 of Indian Penal Code. However, while considering this eligibility, other factors like the jail record so as to point out whether he was a habitual, escaping and absconding etc. are required to be taken into consideration.

4. In view of the said decision in Criminal Writ Petition No.362 of 2010, the Petitioner is eligible for being considered to admit him in the Open Prison and the Selection Committee shall consider his case for the same by taking into consideration his record. The Petitioner's case shall be considered expeditiously and the decision of the same shall be communicated to him within a period of four weeks therefrom.

5. Petition is partly allowed in the aforesaid terms.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]

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