



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

CRIMINAL WRIT PETITION NO. 677 OF 2023

Pratap S/o Bhanudas Tele

...Petitioner

Versus

State of Maharashtra and others

...Respondents

Mr. Rupesh A. Jaiswal for the petitioner

Mrs. P. P. Shinde, APP for the State

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATE : 8th AUGUST 2023

P.C. :

1. By this petition, the petitioner has impugned the order dated 1st March 2021 passed by the respondent no. 4-I.G. Prisons, Pune, transferring the petitioner, to a closed prison from an open prison.
2. Learned counsel for the petitioner submitted that the petitioner was served with a show cause notice dated 25th February 2020 calling upon him to show cause as to why he should not be transferred to a closed prison. He submitted that by the said show cause notice, the

petitioner was granted 7 days' time to reply. However, even before the expiry of the said period, an order dated 28th February 2020 was passed by the respondent no. 3-Deputy Inspector General of Prisons, West-Division, Yerawada, Pune and the petitioner was transferred to a closed prison, without giving him any opportunity of being heard. Learned counsel further submits that thereafter, by order dated 1st March 2021, the Inspector General of Prisons, Pune i.e. the respondent no. 4, issued an order confirming the petitioner's transfer to a closed prison. Learned counsel for the petitioner submitted that the show cause notice issued to the petitioner was a farce and as such the impugned orders were passed without following the provisions of the Maharashtra Open Prisons Rules, 1971.

3. Learned APP submitted that the order dated 28th February 2020 was an interim order till the final order dated 1st March 2021 was passed, pursuant to the show cause notice. Learned APP further, on instructions when questioned, states that the petitioner was not given any hearing pursuant to the show cause notice dated 25th February 2020.

4. Thus, it is not disputed, that though by the said show cause notice, 7 days time was granted to the petitioner to submit his reply, the petitioner was transferred to the closed prison, even before he could make his representation, pursuant to the aforesaid order.

5. Considering the fact, that the petitioner was not given any time to reply to the show cause notice dated 25th February 2020, despite 7 days time being granted and that the order dated 28th February 2020 was passed before the said 7 days period lapsed, we deem it appropriate to quash and set aside the orders dated 28th February 2020 passed by Deputy Inspector General, Prisons, Yerawada, Pune as well as the order dated 1st March 2021 passed by Inspector General, Prisons, Pune.

6. Learned APP, on instructions, submits that the petitioner will be issued a fresh show cause notice within a period of three weeks from today, as per the provisions of the Maharashtra Open Prison Rules 1971, and the same shall be decided thereafter, in accordance with law, after giving an opportunity to the petitioner of making his representation.

7. Needless to state, that we have not expressed any opinion on the merits of the show cause notice issued to the petitioner and hence, all the contentions of all the parties are kept open.
8. Writ Petition is allowed and stands disposed of in the above terms.
9. All parties to act on the authenticated copy of this order.
10. Copy of this order be forwarded to the petitioner who is lodged in Yerwada closed prison, Pune.

GAURI GODSE, J.

REVATI MOHITE DERE, J.