

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

CRIMINAL WRIT PETITION NO. 3768 of 2019

Anil Kumar Chotelal Yadav

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

Ms. Farhana Shah, Advocate for Petitioner.

Mrs. S.D. Shinde, APP for the Respondent–State.

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

RESERVED ON : 31st JANUARY, 2023.

PRONOUNCED ON : 8th FEBRUARY, 2023.

JUDGMENT – (PER : PRAKASH D. NAIK, J.) :-

1. This Petition is filed through jail. Petitioner is detained at Nashik Raod Central Prison, Nashik. Petitioner has prayed that, he may be transferred to open prison.

2. The contents of the Petition would indicate that the Petitioner has been convicted by the Sessions Court for Greater Bombay vide Judgment and Order dated 30th March, 2015 for offence under Section 302 Indian Penal Code (for short ‘IPC’) and sentenced to suffer imprisonment for life. He is also convicted for offence under Section 392 of IPC and sentenced to suffer imprisonment for seven years. It is further contended that the Petitioner was arrested on 8th November, 2011 and he was detained at Mumbai Central Prison as under trial prisoner. Pursuant to

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Judgment of conviction, he was transferred to Nashik Road Central Prison on 16th August, 2015 for undergoing sentence of imprisonment. On the date of filing the Petition the Petitioner has undergone sentence of 7 years, 7 months and 20 days. The Petitioner has completed the sentence of imprisonment awarded for conviction under Section 392 of IPC.

3. The Superintendent, Nashik Road Central Prison has filed affidavit dated 16th December, 2022 stating that the Petitioner was convicted by learned Additional Sessions Judge, Mumbai in Sessions Case No.111 of 2012 in C.R. No.464 of 2011, registered under Section 302, 392 r/w 34 of IPC with Ghatkopar Police Station, Mumbai vide Judgment and Order dated 30th March, 2015. The Petitioner has been sentenced to imprisonment for life for conviction under Section 302 of IPC and imprisonment for 7 years for conviction under Section 392 of IPC. The Petitioner had preferred Criminal Appeal No.588 of 2015 before this Court which was dismissed and the conviction is confirmed. All the substantive sentences were directed to run concurrently. Till 30th November, 2022 the Petitioner has completed actual imprisonment of 10 years, 1 month and 25 days. Since, he has not completed 14 years imprisonment his 14th year proposal is not yet placed before the State Government for consideration of premature release.

4. Learned A.P.P. on instructions from Superintendent, Nashik Road Central Prison, Nashik submitted that, Petitioner has requested for transfer to open prison. However, in accordance with Chapter-II, Rule-4 (ii)(g) accused convicted and sentenced for offences under Sections 121, 121-A, 122, 123, 124, 124-A, 125, 126, 128, 129, 128, 129, 130, 131, 132, 133, 134, 135, 376, 392 to 402 of Indian Penal Code or for offences under the Bombay Prevention of Gambling Act, 1887, or for offences under the Sea Customs Act are not entitled for transfer to open prison.

5. Undisputedly, the Petitioner has been convicted for an offence under Section 302 as well as under Section 392 of IPC. He has been sentenced to imprisonment for life and imprisonment for 7 years on each count respectively. Both the sentences were directed to run concurrently. The Petitioner has undergone sentence of more than 10 years as of today. Thus, the Petitioner has completed the sentence imposed for conviction under Section 392 of IPC.

6. 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 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.

7. The Petitioner is thus 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. Petitioner's case be considered expeditiously and the decision shall be communicated to him within four weeks.

8. Petition is partly allowed in the aforesaid terms.

[PRAKASH D. NAIK, J.]

[A.S. GADKARI, J.]