

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

CRIMINAL WRIT PETITION NO. 5471 OF 2018

Ramprakash Ramprasad Yadav	...Petitioner
Versus	
The State Of Maharashtra	...Respondent

None for the Petitioner.

Mrs. M.H. Mhatre, APP for the Respondent – State.

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

DATE : 7th JANUARY, 2023.

P.C.

1. 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.

2. The Petitioner has been convicted in Sessions Case No.532 of 2018 by the 1st Ad-hoc Additional Sessions Judge for Greater Bombay for offence punishable under Section 302 of Indian Penal

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Code and sentenced to suffer rigorous imprisonment for life. He is also convicted for the offence punishable under Section 397 of Indian Penal Code and sentenced to suffer imprisonment for seven years. The sentences were directed to run concurrently.

3. The Petitioner has stated that he is in jail since 9th May, 2008. Thus the Petitioner has undergone the sentence imposed for conviction under Section 397 of Indian Penal Code.

4. 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.

5. 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 shall be communicated to him within four weeks.

6. The Petition is partly allowed in the aforesaid terms.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)