

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.175 OF 2023

PETITIONER : Apparao S/o Bahadurrao Ghuge,
 Age-45, C-4374, Central prison
 Amravati, Dist. Amravati

..VERSUS..

RESPONDENTS : 1 State of Maharashtra, through
 Inspector General of prison, Central
 Building, Pune

2 The Deputy Inspector General of
 prison (East) Nagpur.

3 Superintendent of central prison,
 Amravati, Dist. Amravati.

 Mr A. Y. Sharma, Advocate for Petitioner.
 Mrs. N. R. Tripathi, APP for Respondent Nos.1 to 3.

CORAM : **VINAY JOSHI AND VALMIKI SA MENEZES, JJ.**

DATE : **15th JUNE, 2023.**

ORAL JUDGMENT : **(PER : VINAY JOSHI, J.)**

. **Rule.** Rule made returnable forthwith. Heard finally by consent of the learned Counsel appearing for the parties.

2. The petitioner has called in question the decision of the Selection Committee holding him ineligible for housing

him in the open prison. It is argued that the Selection Committee has not considered the petitioner's case in proper perspective. Though the petitioner has overstayed for 136 days in the year 2015, however, he himself has surrendered and said aspect has not been taken into account. It is particularly submitted that after the year 2015, on umpteen time, the petitioner was released on furlough as well as on parole and on each occasion, he has surrendered on due date. According to the petitioner, the said aspect was also not considered by the Authority. Moreover, it is pointed out that for late surrender, the petitioner was prosecuted under Section 224 of the Indian Penal Code, 1860, in which the Magistrate has stopped the proceeding, which resulted into closure of the criminal case.

3. The Selection Committee constituted, under Rule 3 sub-clause (i) of Statutory Rules for open prison under Chapter 2 of the Maharashtra Prison Manual, has held the petitioner ineligible in terms of Rule 4 sub-clause (ii)(d)(h). Thus, the first ground is that a case was pending against the petitioner in a Court and secondly he is escapee and there is escape risks. So far as the first ground under sub-clause (b) is concerned, the

petitioner has tendered an order of Magistrate showing that the concerned case was stopped by the Magistrate *vide* order dated 28.10.2021, and thus, nothing is pending against him in a Court. As regards to second ground under sub-clause (h) is concerned, it is submitted that there is no escape risks because after 2015, the petitioner has surrendered on due date on each and every occasion. Moreover, it is submitted that though the petitioner overstayed in the year 2015, however he has surrendered himself. Besides that the petitioner has pointed out on exemplary basis that in case of prisoner namely Dinkar Krushna Narote, though he overstayed for 392 days, his case was considered. The Selection Committee has to act in terms of the criteria specified under Rule 4.

4. Having regard to above facts, we are of the view that the petitioner's case was not considered in proper perspective. We, therefore, quash and set aside the order holding the petitioner ineligible and direct the Authority to reconsider the petitioner's case in the light of above observations and decide the same afresh in accordance with law, within six weeks from the date of receipt of communication of this order.

5. Criminal writ petition is allowed and disposed of in above terms.

(VALMIKI SA MENEZES, J.)

(VINAY JOSHI, J.)