



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

CRIMINAL WRIT PETITION NO. 630 OF 2022

PETITIONER : Suresh Maroti Kamble,
Convict No.C/10414,
Aged - 38, Occ. Nil,
R/o Confined at Central Prison,
Nagpur.

V E R S U S

RESPONDENTS :

1. Inspector General of Prison,
Maharashtra State, Pune.
2. Deputy Inspector General of Prison,
Eastern Region, Nagpur.
3. The Superintendent of Central Prison,
Nagpur.
4. The Superintendent of Yerwada Open
Prison, Pune.

Ms. Shweta Wankhede, Advocate for petitioner.
Ms. N. R. Tripathi, Additional Public Prosecutor for respondent
Nos.1 to 4.

CORAM:- NITIN W. SAMBRE AND
VALMIKI SA MENEZES, JJ.
DATED : 12/09/2023.

ORAL JUDGMENT : (PER NITIN W. SAMBRE, J.) :

1. **Rule.** Rule made returnable forthwith. Heard finally
with the consent of learned counsel appearing for the parties.

2. The petitioner, convicted for the offences punishable under Sections 302, 149 and 148 of the Indian Penal Code was ordered to undergo life imprisonment.

3. The petitioner's prayer for shifting to Open Prison is rejected by the impugned order.

4. The submissions are in pursuant to the orders of this Court passed in L.D.V.C. Criminal Application (APPW) No.1182/2020 in Criminal Writ Petition No.1092/2019 and Criminal Application (APPP) No.865/2020 in LDVC Criminal Application (APPW) No.1182/2020 in Criminal Writ Petition No.1092/2019, the petitioner during Covid Pandemic surrendered about two days late at Nagpur Prison as the Taloja Prison Authority has not accepted his custody though the liberty to that effect was given by the aforesaid order. According to the prosecution, if the order impugned passed by the Authority is perused, same goes contrary to the very scheme of Rule 4(ii) h of the Maharashtra Prison Manual Chapter-II of Open Prison (h).

5. Learned APP while countering the aforesaid submissions would urge that the petitioner is already booked for offence punishable under Section 224 of the Indian Penal Code having surrendered late in point of time. As such, according to

him, the Competent Authority, a Committee headed by Inspector General has rightly passed the order impugned.

6. We have appreciated the aforesaid submissions.

7. The orders of this Court passed in various proceedings referred above speak about late surrender of the petitioner were because of Covid Pandemic and the restrictions on Mumbai were imposed by the State Government.

8. The fact remains that though the petitioner was detained at Nagpur Prison and was released on furlough, he waited at his native place i.e. Bombay and as such, was unable to surrender within time. The efforts of these initiative proceedings before this Court seeking surrender as Bombay Prison Authority sufficiently established his bonafides. The petitioner surrendered late by two days at Nagpur Prison, in view of Taloja Jail Authorities have not accepted his custody in spite of order passed by this Court.

9. In view of that matter, the late surrender of the petitioner cannot be considered to reject his prayer for shifting to Open Prison.

10. In the aforesaid backdrop, the order impugned passed by the respondents is hereby quashed and set aside.

11. We direct the authorities in the aforesaid given facts and circumstances to grant prayer of his shifting to Open Prison, as expeditiously as possible and in any case, within a period of six weeks from today.

12. Petition stands allowed in the above terms.

[VALMIKI SA MENEZES, J.]

[NITIN W. SAMBRE, J.]