



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

CRIMINAL WRIT PETITION NO. 624 OF 2023

Rahul Rajkumar Shingade,
Aged about 35 years,
Prisoner No. C-9670,
Central Prison, Nagpur.

.... **PETITIONER**

// **VERSUS** //

- 1) Deputy Inspector General of Prison,
Eastern Region, Nagpur.
- 2) The Superintendent,
Central Prison, Nagpur.

.... **RESPONDENTS**

Mr. Raju Kadu, Advocate for petitioner.
Mrs. N.R. Tripathi, Additional Public Prosecutor for
respondents.

**CORAM : VINAY JOSHI AND
M.W. CHANDWANI, JJ.**

DATED : 23.10.2023

ORAL JUDGMENT : (Per Vinay Joshi, J.)

1. Heard finally by consent of the learned counsel appearing for the parties. **Rule.** Rule made returnable forthwith.
2. The petitioner has applied for considering his case for transfer to Open Prison. The petitioner's application was rejected by the authority, which is the subject matter of challenge.

3. The petitioner's learned Counsel would submit that the petitioner has completed his graduation during his conviction period, his conduct is good and he has participated in Preparatory Programme Marathi medium and therefore, having regard to all above facts, he be transferred to the Open Prison.

4. The State opposed the petition by stating that the petitioner's case was considered by the Selection Committee appointed in terms of Rule 3(i) under Chapter-II of the Maharashtra Prison Manual, 1979. The duly constituted Committee in its meeting dated 04.02.2022 held that the petitioner being convicted for the offence punishable under Section 376(2)(i) of the Indian Penal Code, he is not eligible in terms of Rule 4(ii) (g) of Chapter-II of the Maharashtra Prison Manual, 1979.

5. Rule (4) of the Maharashtra Prison Manual, 1979 prescribes the criteria to select for confinement in the Open Prison. Rule (4)(ii) of the Maharashtra Prison Manual, 1979 prescribes that the persons who are falling under the category of (a) to (g) of the Rules shall not be sent for confinement of the Open Prison. Rule (g) excludes certain convicts including convicts under Section 376 of the Indian Penal Code from selection. There is no dispute that the petitioner falls in the said category.

6. The petitioner is in jail from last five years. Rule (4)(ii) (g) provides that normally the convict of rape shall not be sent for confinement in the Open Prison. It provides that normally such benefit shall not be accorded to the convict of rape.

7. Having regard to the petitioner's credential, the authority may re-consider since the Rule speaks about the normal situation. Rule 4 (iii) of the Maharashtra Prison Manual, 1979 empowers the Inspector General of Prison to carve out exception. Having regard to the petitioner's conduct and all other relevant material, the authority may re-consider the decision, in accordance with law.

8. In view of that we hereby quash and set aside the impugned order dated 08.04.2023 and direct the Selection Committee to re-consider the petitioner's case and pass an appropriate order in accordance with law. The Petition stands disposed of.

Rule is made absolute in aforesaid terms with no order as to costs.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)