



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 1322 OF 2024

**PRASAD @ DIGAMBAR S/O VINAYAK SAWANT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

...
Advocate for the Petitioner : Mr. Rupesh Anil Jaiswal
APP for Respondents - State : Dr.Kalpalata Patil Bharaswadkar
....

**CORAM : SMT. VIBHA KANKANWADI &
ABHAY S. WAGHWASE, JJ.**

DATE : 19 AUGUST, 2024

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Instant writ petition is by a lifer lodged in open prison Paithan by invoking Articles 226 and 227 of the Constitution of India raising following prayers :

“(B) By Writ of Mandamus or any other appropriate writ, order or directions in the like nature to quash and set aside order of the Respondent no.2 dated 30.04.2024 and, or,

(C) By Writ of Mandamus or any other appropriate writ, order or directions in the like nature to direct the Respondent no.2 to transfer petitioner from Open Jail Paithan to Open Jail Ratnagiri, or any nearest Open Jail in Ratnagiri forthwith.”

2. It is submitted that by virtue of conviction recorded by learned

Sessions Judge, Mumbai for commission of offence under Section 302 of the Indian Penal Code, petitioner is currently lodged at Open Prison Paithan. It is further submitted that he is native of Ratnagiri District. His all near dear ones are at his native and he has differently abled 80 years old father. That in view of his above circumstances he moved application before respondent no.2 requesting to transfer him from Open Prison Paithan to Open Prison at Ratnagiri or any other Prison in Ratnagiri vide application dated 05-02-2024. Learned Counsel for the petitioner pointed out that inspite of favourable report by Prison Officer, Ratnagiri dated 22-12-2022, respondent no.2 turned down the transfer application giving cause to file instant writ petition.

3. Highlighting the background of conviction and inviting attention of the Court to the data spelt out in para 2 of the petition, it is submitted that, petitioner has already spent over nine years in Prison. That though a convict and a prisoner, he enjoys fundamental rights, which are upheld by Hon'ble Apex Court in numerous judgments viz. *A.K.Roy and others v. Union of India*, AIR 1982 SC 710; *Sunil Batra (II) v. Delhi Administration*, (1980) 3 SCC 488; *Maneka Gandhi v. Union of India*, AIR 1978 SC 597 etc., wherein

rights of prisoners are reaffirmed and upheld.

4. He further points out that respondent no.2, inspite of positive report from Jail Authority, Ratnagiri itself, without assigning plausible reason or cause, rejected the transfer application. That due to said action, his visitation rights are defeated. He is from poor family and has old aged father, who because of his disabilities, is unable to come to meet him at Paithan. That therefore, petitioner is constrained to knock the doors of this Court and hence, seeks indulgence at the hands of this Court by granting prayers.

5. Learned APP on the basis of affidavit, opposed the petition and the prayers by submitting that respondent no.2, after due consideration of the facts and circumstances, exercised the powers and according to her, there is no infirmity or illegality so as to interfere.

6. We have heard both the sides to their satisfaction.

7. There is no dispute that present petitioner is served with sentence of imprisonment for life by Court at Mumbai and is currently lodged at Open Prison Paithan. There is also no denial that

petitioner is native of Ratnagiri and at such place also there is facility of Open Prison.

8. As pointed out, rights of Prisoners are affirmed and upheld by the Hon'ble Apex Court in umpteen judgments viz. *Sunil Batra (II)* (supra), *A.K.Roy and Others* (supra); *Maneka Gandhi* (supra) etc.

9. Annexures show that after conviction petitioner was lodged at Nashik Central Prison, Nashik. In view of Order no.11722/23 dated 12-12-2022, it was decided by the Open Prison Selection Committee at Headquarter to shift the petitioner in Open Prison at Paithan. Then, petitioner has sent application dated 11-03-2023 to Sub Headquarter requesting to transfer him to Open Prison at Ratnagiri conveying his concerns. However, said application was rejected by order no.1766/23 dated 23-08-2023. Thereafter, petitioner has forwarded letter dated 05-02-2024 to respondent no.2 i.e. Inspector General of Prisons, Pune, bringing it to the notice that he was qualified to be shifted to Open Prison and thus, he was shifted at Open Prison Paithan. However, as he hails from Ratnagiri and has old aged parents residing there, to enable them and to him to avail visitation rights, he requested for transferring him to Ratnagiri Open Prison. Visitation rights time and again are

acknowledged by both Hon'ble Apex Court as well as High Court. However, by order dated 30-04-2024, his application has been turned down.

10. We have perused the impugned order dated 30-04-2024. It is apparently cryptic in nature as reasons for not considering request are not reflected in the order. Authority is expected to assign reasons for not considering the request transfer. Reasons seeking transfer from Open Prison Paithan to Open Prison Ratnagiri do not appear to have been taken into consideration at all even when Open Prison Authorities at Ratnagiri are willing to accommodate and they have tendered favourable report. Though a discretion, it is expected to be exercised judiciously and not in perfunctory manner. Hence, petitioner succeeds and the impugned order cannot be allowed to be sustained. Accordingly, following order is passed :

ORDER

(I) Writ petition stands allowed.

(II) The impugned order dated 30-04-2024 passed by respondent no.2 thereby rejecting application of petitioner for transfer from Open Prison Paithan to Open Prison Ratnagiri, is hereby quashed and set aside.

(III) Respondent no.2 is directed to transfer petitioner - Prasad @ Digambar S/o Vinayak Sawant to Open Prison Ratnagiri.

(IV) Compliance of this order be made within a period of ONE WEEK from the date of receipt of this order.

(ABHAY S. WAGHWASE)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

SPT