



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 150/2024

Shri Santosh S/o. Ramdas Kalwe Vs. The State of Maharashtra and Ors.

Mr. Raju Kadu, Advocate with Ms Pranali Wasnik, Advocate for
Petitioner.

Ms N. R. Tripathi, A.P.P. for Respondent Nos.1 to 3/State.

CORAM : NITIN W. SAMBRE AND
MRS.VRUSHALI V. JOSHI, JJ.

DATED : 12/12/2024.

P.C.

. Heard.

2. The petitioner has prayed for his transfer to Open Prison which issue is governed by the directions dated February 1, 2022 issued by the State Government in exercise of the powers under Chapter II, Rules 3(i), 4(i) and 4(ii) of the Maharashtra Open Prison Rules, 1971. The relevant Rule 4 reads thus :

“4(i) The following prisoners may be selected for confinement in all open prisons --

Convicted criminal prisoners who—

(a) are found to be of good behaviour, and are physically and mentally fit; and

(b) are willing to do hard work and abide by the rules and regulations of the open prison; and

(c) are sentenced to terms of imprisonment of one year or more and have undergone one-fourth of their sentence excluding remissions ; or

(d) are sentenced to imprisonment for life

or more than 14 years in the aggregate and who have undergone five years of the sentence excluding remission ;

(ii) The following prisoners shall not normally be sent for confinement in an open prison:—

(a) habituals classified as such by courts;

(b) known habituals;

(c) prisoners who are awarded three or more major punishments for prison offences during the last two years, prior to the date of selection.

(d) prisoners having any case pending in a court, (e) prisoners suffering from mental disease or any other serious disease,

(f) prisoners having previous history of serious mental illness,

(g) prisoners convicted and sentenced for offences under Sections 121, 121-A, 122, 123, 124, 124-A, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 376, 392 to 402 of the Indian Penal Code or for offences under the Bombay Prevention of Gambling Act, 1887, or for offences under the Sea Customs Act,

(h) escapees and escape risks,

(i) hired and professional murderers,

(j) prisoners convicted of offences connected with narcotics,

(k) prisoners, who have been transferred from an open prison to a closed prison,

(l) Class I prisoners,

(m) women prisoners,

(n) any other prisoner or category of prisoners whom the Inspector General of Prisons considers unfit for being sent to an open prison.

3. The petitioner in Sessions Case No.422/2013 was convicted by the Additional Sessions Judge, Nagpur for an offence punishable under Sections 364-A, 302 and 201 of the Indian Penal Code. For the offence punishable under first two sections as referred above, he was sentenced with death penalty whereas for offence punishable under Section 201 of I.P.C., he was sentenced to 7 years of imprisonment with fine vide judgment and order dated May 9, 2018.

4. The High Court in Appeal No.368/2018 and Confirmation Case No.2/1018 converted the death sentence to that of life imprisonment vide judgment and order dated July 29, 2022.

5. In this background, claiming that the petitioner has qualified the requirement under Rule 4 quoted above, has sought his transfer to the Open Prison which is rejected by the Competent Authority. The rejection of the prayer of the petitioner is based on two counts (a) that he was convicted for an offence punishable under Sections 302 and 364-A of the Indian Penal Code and was sentenced by the Additional Sessions Judge to death and (b) that even otherwise, his conviction is under Section 364-A of the Indian Penal Code, which disentitled his release on parole and furlough.

6. If we appreciate the reasons furnished so as to reject the prayer of the petitioner, we are required to be

sensitive to the fact that the High Court in Confirmation Case and Appeal Against Conviction preferred by the petitioner, has converted the death sentenced into that of life imprisonment.

7. Apart from the above, merely because the petitioner is convicted for an offence punishable under Section 364-A of the Indian Penal Code, which allegedly disentitled him for parole and furlough leave that by itself will not act as an embargo to consider and grant the request of the petitioner for shifting to Open Prison. If we peruse Rule 4, which is reproduced hereinabove, a specific categorization is made as regards to the cases in which the prayer for shifting can be granted and the cases in which the prayer for shifting cannot be. The fact remains that it is not the opinion of the Expert's Committee, which was constituted, pursuant to the directions dated February 1, 2022, issued by the State Government that the petitioner incurred disqualification pursuant to clause – ii of Rule 4 reproduced hereinabove.

8. The fact remains that he is convicted for an offence punishable under Section 302, 364-A of the Indian Penal Code that by itself does not act as an embargo and the right of the petitioner to claim shifting in view of the language implied in Rule 2 is safeguarded, which upon plain reading does not infer to be mandatory in nature.

9. The Committee, in our opinion, is required to be sensitive to the conduct of the convict like the petitioner. It appears that the petitioner has improved his qualification in jail and holds a qualification of Master of

Arts in Sociology. Such academic qualification of the petitioner and further certification by the Jail Authority that he is fit for work sufficiently supports his case, which fact is ignored by the Competent Authority.

10. That being so, we quash and set aside the decision of the Committee of rejecting the prayer of the petitioner for his shifting to Open Prison.

11. We allow the petitioner by directing the Committee to reconsider his claim and communicate the decision expeditiously.

12. With the above observations, the petition stands disposed of.

(MRS. VRUSHALI V. JOSHI, J.) (NITIN W. SAMBRE, J.)