



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

CRIMINAL WRIT PETITION NO.278 OF 2024

Rahul Babanrao Bhad (C-5889) Aged **Petitioner**
about 30 years, Occup. NA
R/o Mudliar Nagar, Tq. And Dist. Nagpur.

-Versus-

1. Deputy Inspector General Prison, Central
Region, Sambhaji Nagar, (Aurangabad)
2. Special Police Inspector General Prison
(East Region), Nagpur.
3. Superintendent of Prison, Central
Prison, Amravati.
4. Superintendent of Open Prison, Amravati. **Respondents**

Ms. Ratna Singh, Adv. for the petitioner.
Ms. N. R. Tripathi, APP for the respondents.

CORAM : VIBHA KANKANWADI AND
MRS. VRUSHALI V. JOSHI, JJ.

Date of Reserving the judgment:- 16/07/2024

Date of Pronouncing the judgment:- 23/07/2024

JUDGMENT (Per : Vrushali V. Joshi, J.)

Rule. Rule made returnable forthwith. The Criminal Writ Petition is heard finally with the consent of the learned counsel for the parties.

2. The petitioner has taken recourse of moving the criminal writ petition before this Court exercising its

extraordinary jurisdiction under Article 226 and 227 of the Constitution of India for transferring him to open prison.

3. The present petitioner has been convicted in Sessions Trial No.33 of 2018 by the Hon'ble District and Sessions Court, Amravati, vide the judgment and order dated 20.01.2021. The petitioner is undergoing life imprisonment for the offence punishable under Section 302 of the Indian Penal Code.

4. The order of the learned Trial Court mentions sentence of rigorous imprisonment for life till remainder of his natural death. Further, the petitioner was granted set-off under Section 428 of the Code of Criminal Procedure, 1973, in view of the judgment of the Hon'ble Apex Court in the case of **Bhagirath Vs.Delhi Administration** reported in **AIR 1985 SC 1050**, wherein it is held that:-

“Sentence of imprisonment for life itself is a sentence for a fixed term”.

5. This benefit was not given to the petitioner on the ground that imprisonment for remainder of life is not a sentence

for a fixed term.

6. The Maharashtra Open Prison Rules, 1971, have been framed vide Government Notification dated 04th July, 1971, under which a Selection Committee is constituted for the purpose of preparing a list of selected prisoners for confinement in open prisons.

7. Learned counsel appearing for the petitioner, contends that, it is settled law that the Trial Court can pass the order sentencing the convict as per the provisions of Indian Penal Code i.e. imprisonment for life or death. The learned Trial Court cannot modify it as ‘till remainder of his natural life.” These powers are vested only with the Hon’ble High Court or the Hon’ble Supreme Court.

8. Learned Counsel appearing for the petitioner, further submits that the Maharashtra Open Prison Rules, 1971, are framed in exercise of the powers conferred by the relevant clauses under Section 59 of the Prisons Act, 1894, in which there is a categorization made amongst the prisoners, who may be selected

for confinement in all open prisons and vice versa. In consonance, Rule, 4(i)(d) of the Maharashtra Open Prison Rules States that:-

(i) The following prisoners may be selected for confinement in all open prisons...Convicted criminal prisoners who....

(d) are sentenced to imprisonment for life for more than 14 years in the aggregate and who have undergone five years of the sentence excluding remission.

9. However, the State has relied upon Rule 4(ii)(n) which states as under:-

The following prisoners shall not normally be sent for confinement in an open prison:

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

10. However, the basis has not been reasonably explained as there is no such criteria for denying the candidature for selections of confinement under Rule 4(ii) of Open Prisons.

11. Learned APP appearing for the state contradicts the submissions made by the petitioner. She contends mainly that as per Rule 4(ii)(d) prisoners having any case pending in a Court

shall not normally be sent in an open prison, as there is a second case pending against the present petitioner before the Hon'ble 4th Civil Judge and Additional Chief Judicial Magistrate, Amravati, u/s 419, 66D of the Information Technology Act, 2000, 4(ii)(n), which reads as under:

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

12. Moreover the Criminal Appeal bearing No. 179 of 2022 against the conviction passed in Sessions Trial No.33 of 2018 by the Hon'ble District and Sessions Court, Amravati, is pending in this Court.

13. Heard the learned counsel appearing for the parties.

14. The petitioner has filed this writ petition as his request to transfer him in open prison is rejected. As per Rule 4(ii)d and (n) of Maharashtra Open Prison Rules, it is discretionary power of the Inspector General to consider the prisoner for being sent to open prison. Though the petitioner is sentenced for life imprisonment and confined for life imprisonment, may be selected for

confinement in open prison. The trial Court has sentenced him for life imprisonment for *remainder of his natural life*. On this, the petitioner has stated that Sessions Court has no powers to decide the term of imprisonment, it is the power of the High Court and Supreme Court and not any other Court.

15. Learned counsel appearing for the petitioner has relied on the following judgments of the Apex Court about the power.

(a) Gauri Shankar Cvs. State of Punjab AIR (2021) SC 1064 decided on 16th February 2021.

(b) Ravinder Singh Vs. The State Govt. of NCT of Delhi Criminal Appeal NO.1031 of 2023 @ Special Leave Petition (Crl.) No.1214 of 2018.

16. As per rules 4(n) it is the discretionary power. Moreover, as per rule 4(ii) (d), if any case is pending in a Court normally, he is not considered for the confinement in open prison. This rule appears to be reasonable. The purpose of shifting a convict to open prison is to bring him in more natural environment. There are rules governing the exercise of this discretionary power. One case is pending before the Additional Judicial Magistrate First Class, and Additional Chief Judicial

Magistrate, Amravati under Section 419, 66-D of the Information Technology Act. Considering the pendency of the criminal cases, he is not entitled for the confinement in open prison. We do not find that the discretion has been exercised arbitrarily or without application of mind in refusing to shift petitioner in open prison. Hence, the application stands rejected.

17. Rule is made absolute in the above terms. No costs.

(MRS.VRUSHALI V. JOSHI, J) (VIBHA KANKANWADI, J)