



THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL WRIT PETITION NO. 52 OF 2025

Shaikh Rauf S/o Shaikh Ayub. (C-4919)
Age: 38 years, Occ: Convict,
R/O at present Confined in Open Prison Paithan,
District. Chhatrapati Sambhajinagar.

... **Petitioner**

Versus

- 1] Inspector General of Prisons,
Yerwada, Pune.
- 2] Special Police Inspector General,
Prisons & Correctional Services,
Pune.
- 3] Superintendent,
Open Prison Paithan,
Dist. Chhatrapati Sambhajinagar.

... **Respondents**

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Mr. Rupesh Anil Jaiswal, Advocate for Petitioner.

Mr. V. K. Kotecha, APP for Respondent/State.

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CORAM : **SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 19th March, 2025.

PER COURT:

This writ petition has been filed for the following relief:-

*"B] By Appropriate Writ, direction or order in like nature to
Quash and set aside order of the Respondent no. 1*

dated 5.1.2022 and also of the Respondent no.2 dated 6.2.2024 and or,”

And alternatively, there is prayer clause (C), which reads as under:-

“C] By Appropriate Writ, direction or order in like the Respondents be directed to give the petitioner Open Prison Remission for the period 12.01.2012 till 22.07.2023, and accordingly Respondents be directed to take entry to that effect immediately on Nomination Roll of petitioner and, or,”

2 Heard the learned counsel for the petitioner and the learned APP.

3 The learned counsel appearing for the petitioner submits that the petitioner was arrested on 30th November, 2009 in connection with Sessions Case No.82 of 2010, decided by the learned Sessions Judge, Jalna. The petitioner was convicted on 8th December, 2011, for the offence punishable under Sections 302 of the Indian Penal Code and other Sections. The sentence what was awarded, is imprisonment for life. The facts further disclose that while undergoing the sentence, in view of the order passed by the State, he was put in Morshi Open Prison. During Corona pandemic situation, in view of the notification dated 8th May, 2020, he was released on Corona emergency parole

leave initially for 45 days with condition. He was directed to remain present before P.I., Badnapur Police Station, District Jalna. However, the P.I., Badnapur Police Station given report to the Superintendent of Morshi Open Prison on 16th April, 2021 informing that a non-cognizable offence has been registered against the petitioner and therefore, his emergency parole should be cancelled. Accordingly, the competent authority had cancelled his Corona emergency parole leave by order dated 26th July, 2021 and he was directed to surrender with prison authorities at Morshi Open Prison on 18th August, 2021. Accordingly, the petitioner had surrendered himself. Thereafter, by order dated 23rd August, 2021 passed by the DIG, Prison Nagpur, he was transferred from Morshi Open Prison to Paithan Open Prison. Thereafter, the Superintendent of Paithan Open Prison wrote letter dated 5th October, 2021 taking Rule 4(ii)(d) of the Maharashtra Prison Manual, 1979 (hereinafter referred to as "the Prison Manual"), as base for transfer of petitioner to the closed prison. Then after taking necessary formality, he was transferred from open prison to closed prison on 2nd November, 2021. However, now, he is again sent to Paithan Open Prison.

4 The learned counsel for the petitioner submits that as per the impugned order, three non-cognizable cases came to be registered with Badnapur Police Station against the petitioner and therefore,

respondent No.1 by order dated 5th January, 2022 has refused to give necessary remission during the period when the petitioner was in closed prison i.e. from 12th January, 2022 to 22nd July, 2023. It is the order passed by respondent No.2 dated 6th February, 2024, whereby the same has been confirmed. Both authorities have wrongly considered and applied Rule 4(ii)(d) of the Prison Manual in cases of non-cognizable offenses. The non-cognizable offences were not pending in any Court. They failed to consider that all the three cases were filed by the same person and now those N.C. cases have been taken back by the concerned person. Communication to that effect has been made by the said person to the appropriate authorities on 22nd September, 2022. The vital right of the petitioner has been withheld due the misinterpretation of the Rule and therefore, both the orders deserve to be quashed and set aside.

5 The learned APP relies on the affidavit-in-reply of Mr. Balrajendra Chokhaji Nimgade, the Deputy Superintendent, Paithan Open Prison Class-1, who submits that as the non-cognizable cases were reported, the petitioner was then shifted to open prison and then again he has been taken in the open prison, but the period in between will have to be counted as per Rule 4(ii)(d) of Chapter II of the Prison Manual. Even the committee has approved such action. No case is

made out for exercising the constitutional powers of this Court. The learned APP relies on the communications as well as the Rule.

6 In fact, a very small issue is involved regarding the interpretation of Rule 4(ii)(d) of the Prison Manual, which has been pressed into service in this matter. Chapter II deals with Open Prisons and Rule 4(ii) states that “The following prisoners shall not normally be sent for confinement in an open prison” and sub-rule (d) states the category of prisoners as “prisoners having any case pending in a court”. The interpretation of the words used by the Legislature will have to be taken as it is and therefore, by literal meaning of this Rule, a prisoner, whose case is pending in a Court of law, he would be considered as debarred from confining him in an open prison normally. Taking into consideration the Rule 4 (ii) of the Prison Manual, when the word ‘normally’ is used, then the interpretation is that there is no strict bar or each and every prisoner who would be under Sub-Rule (a) to (n) normally should not be sent to confinement, but then the other interpretation is that there can be exception. So, it appears that the discretion is still being given to the prison authorities as well as the higher authorities. We are only concerned with sub-rule (d) i.e. in respect of a prisoner whose case is pending in a Court. Here, it can be considered that three non-cognizable complaints came to be registered

against the petitioner when he was on Corona parole leave. The non-cognizable complaint or case would be mainly governed under Section 155 (1) of the Cr.P.C.. Sub-Section (1) of Section 155 states that, when information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate. Now, the record that has been produced alongwith affidavit-in-reply does not show that the said informant who gave information regarding the non-cognizable offence was referred to the Magistrate. Further, there is no such document, which has been produced alongwith affidavit-in-reply, which would show that the concerned police officer to whom such information was given regarding commission of non-cognizable offence or the officer in charge of the police station had applied for the order of the Magistrate having power to try such case or commit the case for trial for investigation as per Sub-Section (2) of Section 55 of the Cr.P.C.. Respondent No.1 had taken pains to collect the necessary information in respect of Section 155(1) or Section 155(2) of the Cr.P.C. before passing the impugned order. In the nutshell, then no case was pending before the Magistrate.

7 It also appears that there were chapter cases by the same person or on his behalf. The chapter cases were instituted through police station before the Executive Magistrate. By communication dated 22nd September, 2022, all those three chapter cases as well as non-cognizable reports were taken back by the concerned informants. Certainly, some orders would have been passed by the Executive Magistrate while closing those cases. Respondent No.2 before passing the order dated 6th February, 2024, has not considered the fact that those chapter cases have been withdrawn. It appears that a communication appears to have been filed by the present petitioner, which was under Right to Information Act, received from concerned authority, with Naib Tahsildar Office, Badnapur, stating that no NCR or chapter case is then pending before the Executive Magistrate. If no case even under the chapter case category was pending before the Executive Magistrate, then also the interpretation of Rule 4(ii)(d) of the Prison Manual as applied by respondent No.2, is wrong.

8 In the affidavit-in-reply as well as in the submissions by the learned APP, reliance has been placed on Rule 6 of the Prison Manual, which runs thus:-

“6. The case of each prisoner transferred to an open prison shall be put up before the Classification Committee once a month, which shall analyse the

problems of the prisoner in detail. If it finds that a particular prisoner is found unfit for being kept in confinement in the open prison on the ground of indiscipline or unsatisfactory work or any other good and sufficient cause, he shall be transferred, after obtaining approval of the Inspector General of Prisons, to such prison as the Inspector General of Prisons may specify.”

9 This Rule is stated to have been considered together with Rule No.7, Note-1, for refusing to accord remission. Note-1 states that “no remission shall be granted for the broken period or periods in a calendar month” and the table has been given as to how the scale of remission to be counted under the said Rule. Here, in the present case, first of all the petitioner was sent back to closed prison by order dated 5th January, 2022, but actually he was lodged in the closed prison on 12th January, 2022. He was there till 22nd July, 2023. Then he was again brought to the open prison by order of transfer dated 03.06.2023. The said order only states that as per decision taken by the Selection Committee he should be transferred to open prison. Therefore, it is not possible to know as to what was the criteria that was applied by the Selection Committee, when it had passed only one and ½ years to the petitioner to be lodged in the closed prison. Now, as regards Rule 6 is concerned, which is in fact the order i.e. challenged dated 5th January,

2022, we will have to consider that the said rule gives the powers to the Classification Committee if it finds that a particular prisoner is found unfit for being kept in confinement in the open prison on the ground of indiscipline or unsatisfactory work or any other good and sufficient cause, he shall be transferred even to the closed prison. The facts of the case show that transfer of the petitioner from open prison to closed prison by order dated 5th January, 2022, was not on the ground of indiscipline or any unsatisfactory work. Therefore, in order it to be under the category “any other good and sufficient cause”, there should be a reasoned order. However, no such reasoned order is passed and whatever order is passed, is on the basis of misinterpretation of Rule 4(ii)(d) of the Prison Manual, and therefore, both the orders are illegal and require to be quashed and set aside, by further holding that the prisoner is entitled for the open prison remission for the period between 12th January, 2022 to 22nd July, 2023 also.

10 For the aforesaid reason, we proceed to pass the following order:-

ORDER

- I. The writ petition stands allowed.
- II. The order passed by respondent No.1 on 5th January, 2022 and the order passed by respondent No.2 on 6th

February, 2024, are hereby quashed and set aside.

- III. The respondents are directed to accord the necessary remission of open prison to the petitioner even for the period 12th January, 2022 to 22nd July, 2023, and that period should not be considered as broken period.
- IV. Such orders be passed within a period of one month from today.

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[SANJAY A. DESHMUKH, J.] [SMT. VIBHA KANKANWADI, J.]