



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.134 OF 2025

Ankur Narayan Panwar,
Age 45 yrs., Occ. Convict,
Central Jail,
Chhatrapati Sambhajnagar.

... Petitioner

... **Versus** ...

- 1 The State of Maharashtra
Through Superintendent of Jail,
Central Jail,
Chhatrapati Sambhajnagar.
- 2 The State of Maharashtra
Through Superintendent of Jail,
Open Prison, Paithan,
Dist. Chhatrapati Sambhajnagar.
- 3 The State of Maharashtra
Through D.I.G. Prisons,
Chhatrapati Sambhajnagar.
- 4 The State of Maharashtra,
Through I.G. Prisons,
Pune.

... Respondents

...

Mr. R.A. Jaiswal, Advocate for petitioner

Mr. V.K. Kotecha, APP for respondent Nos.1 to 4

...

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

RESERVED ON : 04th APRIL, 2025

PRONOUNCED ON : 11th JUNE, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present petition has been filed for following reliefs -

“(A) To issue appropriate Writ, order or direction and to allow the petition, and thereby direct respondent No.3 to send petitioner in Open Prison, and, or,

(B) To issue appropriate Writ, order or direction and thereby direct the respondents to give Open Prison Remission to petitioner from 03.12.2024 till the date he is again transferred to Open Jail, and, or,

(B-1) By appropriate Writ, order, or direction in like nature to quash and set aside the orders of the respondent No.4 dated 27.01.2025 (at Exhibit- R4 page No.60), as well the decision of the Open Selection Committee dated 10.01.2025 (at Exhibit R3 at page No.55) and thereby direct the respondents to shift the petitioner to Open Prison forthwith, in the interest of justice.”

2 Heard learned Advocate Mr. R.A. Jaiswal for petitioner and learned APP Mr. VK. Kotecha for respondent Nos.1 to 4.

3 Learned Advocate appearing for petitioner submits that

petitioner was convicted on 08.09.2016 for the offence punishable under Section 302 etc. of the Indian Penal Code, 1860 in Sessions Case No.311/2014 by learned City Sessions Court, Greater Bombay. He was sentenced to death for the offence under Section 302 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for five years for the offence under Section 326(B) of the Indian Penal Code. This Court by order dated 12.06.2019 modified the order in Confirmation Case and set aside the death penalty and commuted to sentence of imprisonment for life for the offence punishable under Section 302 of the Indian Penal Code. He was then transferred from Yerwada Central Prison to Open Prison, Paithan on 24.03.2024. He was granted furlough leave on 04.11.2024. He returned to prison on 03.12.2024 and at the time of taking his bag it is stated that he was found with mobile battery. Show cause notice was given, which was replied by petitioner; yet, offence was registered under Section 223 of Bharatiya Nyaya Sanhita vide Crime No.458/2024 and on the same day he was transferred to the closed prison at Chhatrapati Sambhajnagar. Opportunity of hearing was not given to petitioner and this amounts to punishing the petitioner twice i.e. putting him in closed prison again and also asking him to face the trial for the offence under Section 223 of the Bharatiya Nyaya Sanhita. If we read the impugned approved order dated 27.01.2025 passed by respondent No.4 as well as decision of the Open Selection Committee

dated 10.01.2025, then it can be seen that they are in contravention of Rule 6 of the Maharashtra Open Prison Rules, 1971 and also against the principles of natural justice. The petitioner needs to be sent back to the open prison by setting aside the impugned order.

4 Learned APP relies on the affidavit-in-reply filed by Dhansing Dhondiba Kawale, in-charge Superintendent, Paithan Open Prison Class-I, wherein it is stated that after the petitioner was found possessing mobile battery, the further action has been taken. The prisoner must know the rules as to what is permissible to be brought inside the jail. The prison rules and regulations strictly prohibit mobile, mobile parts and electric device. False reason has been given and also he has tried to blame the duty staff unnecessarily. Show cause notice was issued on 07.12.2024 under Maharashtra Prison Manual, 1979 Chapter No.26, Prison Discipline – Statutory Rules, Rule No.17 sub rule 19 for carrying prohibited article in the prison. It was replied by petitioner on 31.12.2024. Separate punishment has not been imposed and *double jeopardy* has been avoided, because his permanent transfer proposal was in process. As he was found possessing and with an intention to bring it in the prison the mobile battery which is the prohibited article, he would automatically disqualify for giving the benefit of open prison and, therefore, the action taken is not against any provisions of

law.

5 We have gone through the Notifications, Open Prison Rule 1971 and Prison Discipline i.e. contained in the Manual. Certainly, the mobile, mobile parts and the other instruments/articles are prohibited from taking it inside the prison. Certainly, these discipline rules are aimed at bringing discipline within inmates. If such articles are then allowed, it would then be the easy task for the convicts to escape or make planning for escape or even help somebody in escaping. The open prisons were created with certain objects and it gives opportunity to the inmates to meet the family members and do such activities which would then be helpful for him to establish his life after the permanent release. However, the said benefit cannot be claimed as of right. There are criteria laid down for holding a prisoner eligible to be put in the open prison, even there is a waiting list for the same, because there appears to be less quota. Therefore, this facility is not available to everybody, though may be that prisoner reaches to the point of eligibility. The selection committee is established under the law to select such prisoners as are eligible for being confined in open prison and the said list in order of seniority for approval will have to be placed before the Additional D.G.P. and Inspector General of Prisons and Correction Centres. As aforesaid, taking into consideration the list and subject to vacancies available those persons would

be transferred to open prison. It is also required to be borne in mind by such prisoners that in order to continue the said benefit or facility they will have to work and maintain good behaviour. It cannot be stated that once that prisoner is placed in the open prison, he cannot be asked to be put in the closed prison. As per Chapter 2 Rule 4(II) Open Prison Rule 1971, a prisoner having any case pending in a Court and any other prisoner or category of prisoners whom the Inspector General of Prisons considers unfit for being sent to an open prison are considered as not eligible to continue the said benefit. There are other conditions also under which such person can be held to be not eligible. That means, the inherent conditions of behaviour will have to be adhered to continuously by such prisoner who has been transferred to open prison.

6 Now, turning to the facts it is not in dispute that the petitioner was granted furlough leave for 28 days and, therefore, he was released from the prison on 04.11.2024. He surrendered himself before the prison authority on 03.12.2024 within time. However, when his person was searched at the entry gate, he was found with a bag and in that bag there was a bermuda pant of which there was a plastic bag having a black colour mobile battery. When this fact was reported to the Superintendent of Jail, show cause notice was issued to petitioner on 07.12.2024, which the

petitioner replied. In his reply he has stated that at the time of his departure his family members had kept some food items and clothes. He himself had no knowledge as to what kind of food items and clothes were kept. But then he blames that the Constable who was taking search suddenly states that he got a mobile battery. When petitioner asked the said Constable to show that to him, it was not showed to him. At another breath he says that by mistake his family members who have no knowledge about the rules and regulations of the prison might have kept the same. Thus, his defence was not certain regarding the possession of the mobile battery. He has not specifically denied it, but then claims ignorance. When it comes to taking decision on the basis of disciplinary provisions, the authority is not required to hold a mini trial. The show cause notice was the opportunity given by the prison authority to the petitioner to explain his stand. This action of sending show cause notice is as per the principles of natural justice. Again at the time of sending him in the close prison, the prison authority did not give further hearing to the petitioner. Taking disciplinary action is different thing than First Information Report for the offence punishable under Section 223 of the Bharatiya Nyaya Sanhita. There is no question of *double jeopardy*. Every prisoner has to follow the rules and regulations, especially in respect of behaviour nobody can be allowed to bring the prohibited articles inside the prison and, therefore, finding a prohibited article in possession of prisoner who is about

to enter the prison would definitely liable to be dealt with as per the disciplinary rules.

7 The only fact is that whether he ought to have been put directly into the closed prison on the same day ? The learned Advocate appearing for petitioner relies on the decision in **Ravi alias Ravindra Umaji Gunjkar vs. State of Maharashtra and others** [2011 All M.R. (Cri.) 1904], wherein this Court after taking note of various provisions of Maharashtra Open Prisons Rules, 1971 and relying on earlier decision in **Prashant Suresh Khade vs. State of Maharashtra** in Criminal Writ Petition 424 of 2010 decided on 06.07.2010 found that when the prisons are selected by a Selection Committee in open prison, then the same Committee should then decide the reverse journey. The said decision was then again referred in **Dhananjay Namdeo Kharade vs. State of Maharashtra and others** [2019 CJ (Bom) 724]. Of course, these two cases appear to be in respect of refusal to work but it is observed that -

“The second limb of Rule 6 indicates that if found unfit for being kept in open prison on the ground of indiscipline, unsatisfactory work or any other good and sufficient cause, prisoner shall be transferred, after obtaining approval of the Inspector General of Prisons, to such prison as the Inspector General of Prisons may specify.”

The proper procedure that was explained in **Ravi @ Ravindra Umaji Gunjkar** (supra) for transferring the prisons selected by Selection Committee for confinement from open prison to central prison would be to place the proposal before the same Selection Committee. Therefore, we have no hesitation in adopting the same procedure here.

8 Here, in the present case, though it appears that petitioner was transferred to the close prison on 03.12.2024, the matter was put before the Selection Committee and the Committee has taken decision on 10.01.2025. The information that was put before the Selection Committee has also been placed before this Court and as aforesaid, the petitioner is stated to be found ineligible in view of Rule 4 (II) (d) & (n) of the Maharashtra Open Prisons Rules, 1971. Now, it is the case of the petitioner that Selection Committee has not heard him. Perusal of **Ravi @ Ravindra Umaji Gunjkar** (supra) would show that it is not stated that Selection Committee should hear the inmate. In both the matters i.e. in **Ravi @ Ravindra Umaji Gunjkar** (supra) and **Dhananjay Namdeo Kharade** (supra) the matter was not put before the Selection Committee at all. It is not the case and the procedure does not show that when the petitioner was selected by the Selection Committee for being transferred to open prison at that time he was heard. Now, on the basis of information supplied and the show cause notice that was given along

with its reply was placed before the Selection Committee and on the basis of same the Selection Committee appears to have taken the decision. There is sufficient compliance of principles of natural justice and, therefore, we found that no case is made out for exercise of powers under Article 226 of the Constitution of India. The petition stands dismissed.

(SANJAY A. DESHMUKH, J.)

(SMT. VIBHA KANKANWADI, J.)

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