



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

**CRIMINAL WRIT PETITION NO. 148 OF 2025**

Indu w/o Chandravijay Manganale  
Age : 47 years, Occu : Housewife,  
R/o Naiknagar, Tq. & Dist. Nanded. **...PETITIONER**

**VERSUS**

1. The State of Maharashtra  
Through its Principal Secretary  
Home Department, Mantralaya, Mumbai - 400 032.
2. The Superintendent,  
Nanded District Prison,  
Tq. & Dist. Nanded - 431 601.
3. The Superintendent,  
Jalna District Prison,  
Tq. & Dist. Jalna - 431 203. **... RESPONDENTS**

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*Mr. Kedar Warad, Advocate for the Petitioner (Appointed)*  
*Ms. P. R. Bharaswadkar, APP for Respondent Nos. 1 to 3*

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

**DATE : 24<sup>th</sup> APRIL, 2025**

**ORDER :**

1. Heard learned advocate for the petitioner and learned APP.
2. In view of our order dated 09.04.2025, the learned APP has taken instructions from the jail authorities, as to why the petitioner's son has been transferred from Nanded prison to Jalna

prison. The learned APP is now producing the communication between Nanded Jail Authority and Additional Sessions Judge, Nanded. From the same communication, it appears that the son of the petitioner is involved in four offences including the offence registered with Police Station, Vimantal under Maharashtra Control of Organised Crime Act, 1999. The permission was sought from the appropriate Court for the transfer.

3. In ***The State of Maharashtra and Ors. Vs. Saeed Sohail Shaikh and Ors.***<sup>1</sup>, the Hon'ble Supreme Court has been observed that removal of any prisoner under Section 29 of the Prisoners Act is envisaged only at the instance of State Government in cases, where prisoner is under sentence of death, or under, or in lieu of, a sentence of imprisonment or transportation, or is undergoing imprisonment in default of payment of fine, or imprisonment in default of giving security for keeping the peace or for maintaining good behaviour.

4. Transfer in terms of sub-section (1) of Section 29 is thus permissible only in distinct situations covered by clauses '(a) to (d)' of Section 29(1) of Prisoners Act. The provision does not deal with under trial prisoners, who do not answer the description given therein. Sub-section (2) of Section 29 also does not make the transfer of an under-trial prisoner. Sub-section (2) no doubt

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1. AIR 2013 SC 168

empowers the Inspector General of Prisons to direct the transfer, but what is contemplated is transfer of a prisoner, who is confined in circumstances mentioned in sub-section (1) of Section 29. Use of words “any prisoner” confined as aforesaid in a prison in sub-section (2) of Section 29 leaves no manner of doubt that a transfer under sub-section (2) is also permissible only if it relates to prisoners, who were confined in circumstances indicated in sub-section (1) of Section 29 of Prisoners Act.

5. Section 26 of Prisoners Act also does not authorise transfer of an under-trial. All that Section 26 provides is that before being removed to any other prison, the prisoner shall be examined by the medical officer and unless the medical officer certifies that the prisoner is free from any illness rendering him unfit, no such removal shall take place.

6. The rationale underlying Sections 167 and 309 of Code of Criminal Procedure, 1973 (for short, “**Cr.P.C.**”) is that continuing detention of a prisoner in jail during the trial or inquiry is legal and valid only under the authority of the Court/Magistrate before whom the accused is produced and before whom he is being tried.

7. The remand orders invariably are addressed to the Superintendent of Jails, where the under-trials are detained till their

production before the Court on the date fixed for that purpose. The prison where the under-trial is detained is thus a prison identified by the competent Court either in terms of Section 167 or Section 309 of the Cr.P.C. It is axiomatic that transfer of the prisoner in such a case of detention would be permissible only with the permission of the Court under whose warrant the under-trial has been remanded to custody.

8. The power exercisable by the Court while permitting or refusing transfer is 'judicial' and not 'ministerial'. The transfer of an under-trial to a distant prison may adversely affect not only his right to defend himself, but also isolate him from the society of his friends and relations. Any order that the Court may make on a request for transfer of a prisoner is bound to affect him prejudicially. Thus, in the writ petition, we have also considered as to whether the orders passed by the learned Additional Sessions Judge are legal and appropriate or not. It is now informed that, as the son of the petitioner had misbehaved in the jail, the application for transfer was made to the appropriate Court in whose custody the son of the petitioner was. The concerned Court has also considered the CCTV footage of the jail and it was also shown to the under-trial prisoner. Therefore, the transfer was effected only for a period of three months and it was then stated that if the under-trial prisoner files an undertaking of good behaviour and discipline in the

prison, he would be allowed to return to Nanded District Prison, Class-2.

9. It appears that thereafter, he again made an application after the period of said three months for transferring him back to Nanded and thereafter, upon taking reports of the concerned authorities, the learned Additional Sessions Judge, Nanded by order dated 11.03.2025, had transferred the son of the petitioner back to Nanded prison. Therefore, the present petition has become infructuous and also on the basis of all the aforesaid proceedings, which have been legally followed and considered on merits, we do not find any merit in the present writ petition. We dispose of the writ petition, accordingly.

10. The fees of the appointed advocate for the petitioner is quantified at Rs. 7000/- to be paid by the High Court Legal Services Sub-Committee, Aurangabad.

**[ SANJAY A. DESHMUKH ]**  
**JUDGE**

**[ SMT. VIBHA KANKANWADI ]**  
**JUDGE**

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