



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

CRIMINAL WRIT PETITION NO.713/2024

Shri Pankaj Moreshwar Dikonwar
alias Pankaj Tanaji Kusalkar,
aged about 31 years, Occ. Student,
(Prisoner No. C-10308, Central Prison,
Nagpur, Tahsil and District Nagpur) **.....PETITIONER**

...V E R S U S...

1. Additional Director General and
Inspector General of Prison,
Maharashtra State, Pune.
2. Deputy Inspector General of Prison,
Eastern Region, Nagpur.
3. The Superintendent, Central Prison,
Nagpur. **...RESPONDENTS**

Mr. R. L. Kadu, Advocate for petitioner.
Mrs. N. Tripathi, A.P.P. for respondents.

CORAM:- ANIL L. PANSARE AND M. M. NERLIKAR, JJ.
DATED :- 11.08.2025

ORAL JUDGMENT (Per: Anil L. Pansare, J.)

Issue Rule, returnable forthwith. Mrs. N. Tripathi,
learned A.P.P. waives service for respondents. With consent of
learned counsel for the parties, the petition is taken up for final
hearing.

2. Petitioner's request to consider him for shifting to Open
Prison, has been rejected solely on the count that he has been

convicted for the offence punishable under Sections 302, 307, 449 of the Indian Penal Code, 1860 and has been sentenced to imprisonment until death.

3. We have gone through the relevant Rule of the Maharashtra Open Prison Rules, 1971. Rule 4 provides that a prisoner with good behaviour and willing to do hard work and has undergone 1/4th of his sentence, is eligible for selection for confinement in the Open Prison. Sub Rule (ii) thereof provides for the persons who shall be normally not sent for confinement in an Open Prison, which includes habituals classified as such by the Court, prisoners who are awarded three or more major punishments, prisoners having any case pending in a Court and so on.

4. Learned A.P.P. has invited our attention to clause (xiv) of Sub Rule (2) of Rule 4, which provides for non consideration of a prisoner for Open Prison where the Inspector General of Prisons considers a prisoner to be unfit for being sent to Open Prison.

5. In our view, if the benefit of Open Prison is to be denied on aforesaid count, the Inspector General of Prisons should pass a reasoned order disclosing grounds of denial, which would then

entitle a prisoner to challenge the same. No such order/document is shown to us. In fact, it is not the Inspector General of Prisons but the Selection Committee who has declared the petitioner as ineligible on the ground that he has been sentenced to undergo imprisonment until death.

7. We are of the view that the denial of relief is an outcome of non application of mind. What was relevant is conduct of the prisoner. The petitioner's counsel submits that the petitioner has been released on furlough and parole on number of occasions. The respondents have made no grievance about he reporting late. Thus, it is suggested that because of good behaviour, the petitioner was released on furlough and parole and further has reported back to the prison within time, which would only mean and/or suggest that his behaviour continued to be good. The counsel further submits that the petitioner has completed his graduation while in prison and is also ready to do hard work and abide by the rules of the Open Prison.

8. This aspect has been not considered at all and a mechanical approach is adopted saying that as the sentence is for imprisonment for life until death the petitioner is not entitled for shifting to Open Prison. The communication is thus unsustainable.

That writ petition is accordingly partly allowed. Communication dated 21.03.2024 issued by respondent No.3 is quashed and set aside. The request made by the petitioner is remanded back to the respondents for consideration afresh, in accordance with law and also what has been stated in the body of order.

The decision shall be taken within four weeks from the date of receipt of the order.

The writ petition is disposed of in the above terms.

(M. M. Nerlikar,J.)

(Anil L. Pansare, J.)

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