



Judgment

447 wp569.25

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

CRIMINAL WRIT PETITION NO.569 OF 2025

Mohan s/o Ramkrushna Ghanchekar,
(brother of prisoner namely Dipak
@ Khatya Ramkrushna Ghanchekar)
aged 44 years, occupation- private
r/o Mahada Road, near Mata Mandir,
Godhani Railway, district Nagpur. **Petitioner.**

:: VERSUS ::

1. State of Maharashtra,
through Superintendent,
Central Jail Nagpur.

2. State of Maharashtra,
through Secretary Department of Home,
Mantralaya, Mumbai-32. **Respondents.**

Shri R.R.Vyas, Counsel for the Petitioner.
Ms.T.H.Udeshi, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 24/07/2025

PRONOUNCED ON : 14/08/2025

JUDGMENT

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1. Heard learned counsel Shri R.R.Vyas for the petitioner and learned Additional Public Prosecutor Ms.T.H.Udeshi for the State. **Rule.** Heard finally by consent.

2. The petitioner who is the brother of the prisoner has challenged order dated 2.7.2025 passed by learned Additional Sessions Judge-8, Nagpur on the application filed by the Superintendent of Central Prison, Nagpur in Sessions Case No.206/2023 granting liberty to the Superintendent of the Central Prison at Nagpur to shift undertrial accused Dipak @ Khatya Ramkrushna Ghanchekar (the prisoner) in any other Central Prison according to law.

3. The prisoner, who is undertrial in Crime No.18/2023 registered under Sections 109, 302, 323, 143, 147, and 148 read with 34 of the IPC, is in Central

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Jail at Nagpur since 19.1.2023. He is involved allegedly in various incidents inside the jail as well as in random fights to which he is not concerned. Thus, as per the allegations, he is trying to influence other prisoner to agitate police officials and behaving in an undisciplined manner. Even, while taking him to court for appearance, he picks up quarrels with police officials and tries to establish a syndicate in the jail due to which it is difficult for the jail authorities to maintain discipline and, therefore, the Superintendent of the Central Prison at Nagpur filed an application before learned Sessions Judge to shift the prisoner in any other prison for the safety reasons.

4. Learned Sessions Judge, after hearing learned APP, granted liberty to the Superintendent of the Central Prison at Nagpur to shift the prisoner in any other prison.

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5. Being aggrieved and dissatisfied with the same, the present petition is filed contending that while passing order, learned Sessions Judge has not followed rule of natural justice and without granting an opportunity to the prisoner, passed the order which is violation of fundamental rights of the said prisoner.

6. Learned counsel for the petitioner submitted that fundamental rights of the prisoner including to right to speedy trial would affect due to the said order as he would be deprived from giving instructions to his counsel to put forth his defence. He would not be able to meet his relatives. In view of that, the order passed by learned Sessions Judge deserves to be quashed and set aside. He submitted that in view of the observations of the Hon'ble Apex Court, the prisoner has every right to raise an objection to the said prayer and ultimately it affects his

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right and, therefore, an opportunity of hearing requires to be given to the prisoner.

7. In support of his contentions, learned counsel for the petitioner placed reliance on the decision in the case of **State of Maharashtra and ors vs. Saeed Sohail Sheikh and ors, reported in (2012)13 SCC 192** wherein it is held that transfer of the prisoner from any place of detention would be permissible only with the permission of the court under whose warrant the undertrial has been remanded to custody. The transfer of an undertrial to a distant prison may adversely affect his right to defend himself but also isolate him from the society of his friends and relations. Hence, it is obligatory for the Court to apply its mind fairly and objectively to the circumstances in which the transfer is being prayed for and take a

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considered view having regard to the objections which the prisoner may have to offer.

8. *Per contra*, learned Additional Public Prosecutor for the State strongly opposed the petition and opposed the said contentions made by learned counsel for the petitioner on the ground that no cause of action arose to file this petition as it was the DIG (Prison) who has to pass the order as to the transfer of the prisoner and the said order is not passed. The application is moved by the Superintendent of the Central Prison at Nagpur considering the fact that due to the conduct of the prisoner, it is difficult for the prison authorities to maintain discipline in the prison. It further reveals that he is involved in the fights to which he is not concerned with as well as he is trying to form a group in his favour. He is also creating trouble when he is taken to the court

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for appearance. The fundamental rights of the prisoner are not absolute and, therefore, the order impugned in the petition is correct and legal one and no interference is called for.

9. In support of her contentions, she has placed reliance on the decision in the case of **Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and anr, reported in (2005)3 SCC 284** wherein it is held that the fundamental right of an undertrial prisoner under Article 21 of the Constitution is not absolute. His right of visitations as also other rights are provided in the Jail Manual. The Respondent as an undertrial prisoner was bound to maintain the internal discipline of the jail. Such a fundamental right is circumscribed by the prison manual and other relevant statutes imposing reasonable restrictions on such right. It is further held that a convict

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or an undertrial who disobeys the law of the land, cannot contend that it is not permissible to transfer him from one jail to another because the Jail Manual does not provide for it.

She further placed reliance on the decision in the case of **State of Jharkhand and ors vs. Vikash Tiwary alias Bikash Tiwary alias alias Bikash Nath**, reported in **(2025)3 SCC 226** wherein the Hon'ble Apex Court held that the transfer of prisoners from one jail to another is not a matter of routine and must be approached with circumspection. In the present case, the reason given for transfer was the existence of imminent possibility of a gang war and due to insufficient kachpals, the prison authorities would find it difficult to effectively manage such a situation, if it arises. In this exceptional circumstance, the Inspector General of Prisons passed the

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order transferring the respondent to another jail. There is a duty on the Inspector General of Prisons to ensure the safety of all the inmates in the prison. This measure was essential to ensure not only the safety of the prisoner but also to disrupt and neutralize the potential for gang-related violence within the prison and, therefore, such decision does not suffer from the voice of arbitrariness.

10. During the submissions, learned counsel for the petitioner submitted that law regarding transfer of the prisoner from one prison to another prison and the powers of the Inspector General are not in dispute. Limited grievance raised on behalf of the prisoner is that, no opportunity of raising objection was granted to the petitioner as his fundamental rights including rights to life and other basic human rights are violated and, therefore,

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before passing such an order, an opportunity has to be granted to the prisoner to raise objections.

11. In the case of **State of Andhra Pradesh vs. Challa Ramkrishna Reddy and ors, reported in AIR 2000 SC 2083**, it has been held that a prisoner whether convict, under trial or detenu, have all fundamental rights including right to life and other basic human rights. It has been further held that, the State has no authority to violate such rights, as the prisoner, be he a convict or under trial or a detenu, does not cease to be a human being, even when lodged in the jail, he continues to enjoy all his fundamental rights.

12. In the case of **Sunil Batra (II) vs. Delhi Administration, (1980) 3 SCC 488** and in the case of **A.K. Roy and others vs. Union of India and another, AIR 1982 SC 710** the Hon'ble Apex Court has been laid down that

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distant place of transfer be avoided even for a detenu or prisoner.

13. In **M/s. Kranti Associates Pvt. Ltd. and another vs. Sh. Masood Ahmed Khan and others**, 2010(6) ALL MR 992, it is held that, every order should be speaking order.

14. Admittedly, in the present case, after receipt of the application from the Superintendent of the Central Prison at Nagpur, no notice was issued to the prisoner and no opportunity was granted to him to raise an objection. There is no dispute that various complaints are received against the prisoner including the complaint of his wife. The wife has denied to meet him as she alleged that even during visitation, the prisoner mentally harassed her and abused her and assault her. The complaints are also received from the other prisoners as well as officials of the Jail. The involvement of the prisoner is also reveals in

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various fights, quarrels as well as the harassment to the officials when he was taken to the court. Even, accepting the allegations as it is, the questions remain as to the opportunity, which requires to be given to him.

15. Perusal of the order impugned shows that on receipt of the application, merely on going through the recital of the application, learned Sessions Judge has passed the order granting liberty to the Superintendent of the Central Prison at Nagpur.

16. In view of the observations of the Hon'ble Apex Court in the case of **State of Maharashtra and ors vs. Saeed Sohail Sheikh and ors** *supra*, it is specifically observed that, "applying the above principles to the case at hand and keeping in view the fact that any order that the Court may make on a request for transfer of a prisoner is bound to affect him prejudicially, we cannot but hold

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that it is obligatory for the Court to apply its mind fairly and objectively to the circumstances in which the transfer is being prayed for and take a considered view having regard to the objections which the prisoner may have to offer. There is in that process of determination and decision-making an implicit duty to act fairly, objectively or in other words to act judicially. It follows that any order of transfer passed in any such proceedings can be nothing but a judicial order or at least a quasi-judicial one. Inasmuch as the trial court appears to have treated the matter to be administrative and accordingly permitted the transfer without issuing notice to the under-trials or passing an appropriate order in the matter, it committed a mistake. A communication received from the prison authorities was dealt with and disposed of at an administrative level by sending a communication in reply without due and proper consideration and without

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passing a considered judicial order which alone could justify a transfer in the case. Such being the position the High Court was right in declaring the transfer to be void and directing the re-transfer of the undertrials to Bombay jail. It is common ground that the stay of the proceedings in three trials pending against the respondents has been vacated by this Court. Appearance of the undertrials would, therefore, be required in connection with the proceedings pending against them for which purpose they have already been transferred back to the Arthur Road Jail in Bombay. Nothing further, in that view, needs to be done by this Court in that regard at this stage”.

17. In the light of the above observations, in the present case, learned Sessions Judge, before granting an opportunity of being heard the prisoner to raise any objection, has passed the order. Admittedly, it is against

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the rule of natural justice and, therefore, the order impugned requires to be quashed and set aside. Hence, I proceed to pass following order:

ORDER

(1) The Criminal Writ Petition is **allowed**.

(2) The order dated 2.7.2025 passed by learned Additional Sessions Judge-8, Nagpur on the application filed by the Superintendent of Central Prison, Nagpur in Sessions Case No.206/2023 granting liberty to the Superintendent of the Central Prison at Nagpur to shift undertrial accused is hereby quashed and set aside.

(3) The matter is remanded back to learned Additional Sessions Judge-8, Nagpur for considering the same afresh.

(4) After receipt of the said matter, learned Sessions Judge shall issue notice to the prisoner and after giving a

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sufficient opportunity to the parties concerned, shall pass an appropriate order as per law.

(5) It is directed that while hearing the prisoner, he shall be heard through Video-Conferencing in order to restrain him from doing indisciplined behaviour.

Petition stands **disposed of**. Rule accordingly.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!