



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

CRIMINAL WRIT PETITION NO. 835 OF 2025

Santosh s/o Ramdas Kalwe

Vs.

State of Maharashtra, Thru. Addl. Director General and Inspector General of Prison,
Maharashtra State, Pune and Ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. Raju Kadu, Advocate for petitioner.

Mr. Sagar A. Ashirgade, Addl. PP for respondent/State.

CORAM : ANIL L. PANSARE AND NIVEDITA P. MEHTA, JJ.

DATE : 20.01.2026

Learned Additional Public Prosecutor submits
that affidavit-in-reply is ready and will be filed during the
course of the day.

2. Statement accepted.

3. The challenge is to order dated 11.06.2025
passed by respondent No.3 refusing the request made by
petitioner to transfer him to open prison.

4. The petitioner is convicted for the offence
punishable under Section 302, 364(A) of the Indian Penal
Code. The reason for rejecting the request is that the
offence under Section 364(A) is a serious offence and
therefore, the petitioner is not entitled for the said relief.
Accordingly, and taking aid of Rule 4(ii) of the

Maharashtra Open Prisons Rules, 1971 (for short 'Rules of 1971'), the respondent No.3 has refused to transfer the petitioner to open prison.

5. As such, petitioner had earlier approached this Court by filing writ petition being Criminal Writ Petition No.150 of 2024 challenging the decision of the Committee rejecting the prayer of the petitioner for shifting to open prison.

6. This Court (*Coram : Nitin W. Sambre And Mrs. Vrushali V. Joshi, JJ*) vide order dated 12.12.2024 was pleased to quash and set aside the decision by assigning following reasons:

"5. In this background, claiming that the petitioner has qualified the requirement under Rule 4 quoted above, has sought his transfer to the Open Prison which is rejected by the Competent Authority. The rejection of the prayer of the petitioner is based on two counts (a) that he was convicted for an offence punishable under Sections 302 and 364-A of the Indian Penal Code and was sentenced by the Additional Sessions Judge to death and (b) that even otherwise, his conviction is under Section 364-A of the Indian Penal Code, which disentitled his release on parole and furlough.

6. If we appreciate the reasons furnished so as to reject the prayer of the petitioner, we are required to be sensitive to the fact that the High Court in Confirmation Case and Appeal Against Conviction preferred by the petitioner, has converted the death sentenced into that of life imprisonment.

7. Apart from the above, merely because the petitioner is convicted for an offence punishable under Section 364-A of the Indian Penal Code, which allegedly disentitled him

for parole and furlough leave that by itself will not act as an embargo to consider and grant the request of the petitioner for shifting to Open Prison. If we peruse Rule 4, which is reproduced hereinabove, a specific categorization is made as regards to the cases in which the prayer for shifting can be granted and the cases in which the prayer for shifting cannot be. The fact remains that it is not the opinion of the Expert's Committee, which was constituted, pursuant to the directions dated February 1, 2022, issued by the State Government that the petitioner incurred disqualification pursuant to clause – ii of Rule 4 reproduced hereinabove.

8. The fact remains that he is convicted for an offence punishable under Section 302, 364-A of the Indian Penal Code that by itself does not act as an embargo and the right of the petitioner to claim shifting in view of the language implied in Rule 2 is safeguarded, which upon plain reading does not infer to be mandatory in nature.

9. The Committee, in our opinion, is required to be sensitive to the conduct of the convict like the petitioner. It appears that the petitioner has improved his qualification in jail and holds a qualification of Master of Arts in Sociology. Such academic qualification of the petitioner and further certification by the Jail Authority that he is fit for work sufficiently supports his case, which fact is ignored by the Competent Authority.”

7. Thus, the Court highlighted the importance of post conviction conduct of the petitioner wherein Court observed that the petitioner has improved his qualification in jail and now holds a qualification of Master of Arts in Sociology. The Court also noted that jail authority had certified that he is fit for work.

8. We may note here that the proposal/case of a prisoner for shifting to open prison has to be considered

not on the basis of the offences, for which, he has been convicted but on the basis of his conduct post conviction. Rule 4(1) (i) of the Rules of 1971 provides for such criteria which *inter alia*, includes good behaviour, physical and mental fitness, willingness to do hard work and to abide by rules and regulations of open prison and so on.

9. That being so, we are of the view that respondent should consider the subsequent conduct and take appropriate decisions.

10. Accordingly, we allow the petition partly. The impugned order dated 11.06.2025 issued by the respondent No.3 – Additional Superintendent, Nagpur Central Prison, Nagpur is quashed and set aside. The proposal/request of petitioner is remitted back to respondent No.3 for taking decision afresh in accordance with the law/rules and what has been stated in the body of the order. The decision shall be taken within four weeks from today.

11. The writ petition is disposed of in terms of above. No order as to costs.

12. All concerned shall act on authenticated/uploaded copy of the order.

(Nivedita P. Mehta, J.)

(Anil L. Pansare, J.)