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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 512/2019

ASHOK VISHWAKARMA @ SARJI (IN JC) Petitioner

Through: Mr Akshay Bhandari, Mr Kushal Kumar, Mr Anmol Sachdeva, Ms Megha Saroa, Mr Janak Raj Ambavat, Advocates.

versus

STATE

.....Respondent

Through: Mr. Sanjay Lao, Standing Counsel (Crl.) with Ms. Priyam Agarwal & Mr. Abhinav Kumar Arya, Advocates.
Insp. O.P. Vishnoi, P.S. Najafgarh.

CORAM:

JUSTICE PRATHIBA M. SINGH

JUSTICE AMIT SHARMA

ORDER

% 07.11.2024

1. This hearing has been done through hybrid mode.
2. The present petition under Article 226 of the Constitution of India has been filed challenging the vires of Rule 1322 (II) of the Delhi Prison Rules, 2018 (hereinafter "*DPR, 2018*"). As per the said Rule, prisoners who are convicted for offence of dacoity, terrorist crimes, or kidnapping covered under Sections 363A to 373 of IPC, or for other offences as mentioned in the said Rule, are not permitted to be placed in semi-open jails. The Rule 1322 (II) of DPR, 2018 is extracted hereinunder:

"1322. The following prisoners shall not be sent in a semi-open prison who:-

.....

II. Have been convicted for offences such as dacoity, terrorist crimes, kidnapping covered under Section



363A to 373 of IPC, Smuggling, NDPS Act, foreigners
or members of organized criminal gangs.

....”

3. It is the submission on behalf of the Petitioner that such exclusion would be violative of the rights of convicts and would be discriminatory in nature.

4. On the last date of hearing, i.e., 4th October, 2024, this Court was informed that in terms of the order dated 1st October, 2024, passed by the Supreme Court in **SLP Crl. No. 1985-1987/2024**, the Petitioner was directed to surrender before the concerned jail authorities. Vide order dated 4th October, 2024, nominal roll of the Petitioner was called for and parties were also directed to file their written submissions.

5. The nominal roll has been received, which shows that as of 26th October, 2024, the Petitioner has undergone incarceration for 19 years and 20 days.

6. Insofar as the prayer for making the semi-open jail available to the Petitioner is concerned, the status report dated 1st November, 2024, states that Petitioner is not entitled to semi-open jail in view of Rule 1322(II) of DPR, 2018.

7. It is noted that during pendency of the present petition, the aforesaid Rule was amended vide notification F. No. 9/82/2019-HG/715-72 dated 12th February, 2020. The said amended Rule is extracted hereinunder:

“1322. The following prisoners shall not be sent in a semi-open prison who:-

.....

II. Have been convicted for offences such as dacoity with murder, terrorist crimes, kidnapping with murder, rape with murder, smuggling, including those convicted



under the Narcotics Drugs and Psychotropic Substances Act, 1985 and foreigners or members of organized criminal gangs.....”

8. In view of the aforesaid amendment, Id. Counsel for the Petitioner wishes to withdraw the present petition with liberty to challenge the amended Rule 1322(II) of DPR, 2018.
9. The present petition is dismissed as withdrawn and disposed of with liberty as prayed for.
10. Pending application(s), if any, also stands disposed of.

PRATHIBA M. SINGH, J

AMIT SHARMA, J

NOVEMBER 7, 2024/bsr/bh