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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 3177/2019**

JITENDER @ JEETU

..... Petitioner

Through: Ms Neha Kapoor with Mr Mohit
Bhadu, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Mr Divyanshu Sharma, Advocate for
Mr Avi Singh, ASC with SI Lichman,
SIU-1/Crime Bench.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.11.2019

CRL.M.A. 40220/2019

1. Allowed, subject to all just exceptions.

W.P.(CRL) 3177/2019

2. The petitioner has filed the present petition, *inter alia*, praying that a writ of mandamus be issued directing the respondent to shift the petitioner to a semi open jail.

3. The petitioner was convicted of the offence under Sections 364A/120B of the Indian Penal Code, 1860 (IPC). He was sentenced to life imprisonment. It is stated that the petitioner has already served seventeen years in custody and he is entitled to be transferred to a semi open jail.

4. The learned counsel appearing for the petitioner also points out that the Delhi Prisons Rules, 2018 specifically provide that certain prisoners

cannot be sent to a semi open jail. This includes persons convicted of the offences under Sections 363A to 373 of the IPC. Rule 1322(II) of the Delhi Prison Rules, 2018, is set out below:-

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

XXXX

XXXX

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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 organised criminal gangs.”

5. The said Rules are not impugned in the present petition. It is also well settled that a writ of mandamus cannot be issued contrary to a statute. In this view, the present petition is unmerited.

6. The learned counsel appearing for the petitioner has also referred to an order dated 06.09.2019 passed by the Supreme Court in W.P.(Crl.) 326/2018 captioned '*Karik Subramaniam v. Union of India and Ors.*'. By the said order, the petitioner therein – who had completed twenty-five years in jail – was directed to be moved to a semi open jail. The said order does not indicate that the petitioner therein had been convicted of any of the offences as mentioned in Rule 1322 (II) of the Delhi Prison Rules, 2018. However, the learned counsel appearing for the petitioner insists that the petitioner therein was convicted of an offence similar to that committed by the petitioner herein. She submits that on the principal of parity, the respondent should be directed to consider the petitioner's case.

7. The aforesaid contention is unpersuasive. First of all, the order dated

06.09.2019 does not indicate any reason that persuaded the Supreme Court to pass the said order. Further, under Article 142 of the Constitution of India, the Supreme Court has the power to pass an order to meet the ends of justice. Plainly, the said order is not an authority for the proposition that this Court can issue directions contrary to statutory rules.

8. The petition is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

NOVEMBER 15, 2019
MK