

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

Judgment Reserved on: 19.11.2019
Judgment Pronounced on: 13.01.2020

+ **W.P.(CRL) 239/2019**

SALIM HUSSAIN Petitioner

Through Mr. Akshay Bhandari,
Advocate

Versus

STATE (GOVT OF NCT OF DELHI) Respondent

Through Mr. Ranbir Singh Kundu,
ASC (Criminal) with Mr.
Shivam Sahoran, Mr. Hitesh
Vali, Ms. Suman Saharon and
Mr. Pawan Kumar, Advds with
SI Karan Pal, P.S.: Greater
Kailash Part-I

+ **CORAM:**
HON'BLE MR. JUSTICE BRIJESH SETHI
JUDGMENT

BRIJESH SETHI, J.

1. Vide this Judgment, I shall dispose of a petition filed under Article 226 of the Constitution of India read with Section 482 CrPC for a writ to quash the impugned order dated 16.04.2017 by which the petitioner has been punished by Dy. Superintendent of Jail for entering into criminal conspiracy and awarded a punishment by

which his MULAQAT (prisoner's meeting with relatives) has been stopped for two weeks.

2. The petitioner has been convicted u/s. 302 r/w. 120-B IPC and has been sentenced to life imprisonment on 12.12.2013 by the Court of Ld. ASJ-04, South-East, Saket Courts, New Delhi. The petitioner has preferred Crl. Appeal No. 524/2014 against the said judgment of conviction and same was dismissed on 13.04.2015.

3. The case as alleged by the prosecution is that victim Jitender S/o. Daljeet had fought with another convict Mukesh and victim was then called to the Control Room of CJ-08 where on being confronted, the victim slapped the petitioner who was working as a Chakkar Sahayak there. It was alleged that on 16.04.2017, the petitioner entered into a conspiracy with one Jitender S/o. Hari Ram and they both directed Madan Lal to assault the victim with a blade. Accordingly, Madan Lal assaulted the victim with a surgical blade and the petitioner was punished for a jail offence of conspiracy to assault a fellow inmate under the Delhi Jail Manual and his MULAQAT (prisoner's meeting with relatives) was stopped for two weeks. Based on the statement of the victim jitender S/o. Daljeet, an

FIR No. 160/17 was registered at PS Hari Nagar u/s. 324/326 IPC. Subsequently a chargesheet u/s. 324/326/341/34 IPC was filed before the Court of Ld. MM, THC, Delhi against accused Manoj @ Monu and Madan Lal @ Badal.

4. It is submitted that even though the victim had accused the petitioner of conspiring against him and having him assaulted. However, after a comprehensive investigation in the matter, the petitioner was not even chargesheeted for the said offence of conspiracy by the police. A comprehensive investigation conducted by the police is far more credible than an internal enquiry by the jail authorities. When the police did not find any ground to chargesheet the petitioner and send him to face trial for conspiracy, there is no justification for the jail authorities to have punished the petitioner for conspiracy under the Delhi Prisons Act. It is submitted that it came to the knowledge of the petitioner in December 2018 only that a chargesheet for the FIR No. 160/17 u/s. 324/326/341/34 IPC has been filed. The petitioner was not even given the copy of chargesheet. The petitioner was also not provided with a copy of the punishment until 14.01.2019 and it was provided only on his

written request and, therefore, there was a delay in filing the said petition. It is, therefore, prayed that the impugned order dated 16.04.2017 passed by the Dy. Superintendent of Central jail-08, Tihar Jail Complex, punishing the petitioner for conspiracy be set aside and the jail authorities be directed to award the remission to the petitioner that was not awarded to him as a result of the said jail punishment.

5. Status report has been filed by the Ld. ASC submitting that during the course of investigation by the police in the case no role of the petitioner (Salim Hussain) was found regarding injuries caused to the complainant Jitender @ Jitu. However, sufficient evidence was found against the inmates Monu @ Manoj and Madan Lal Badal. After completion of investigation a charge-sheet u/s 324/326/341/34 IPC in the said case has been filed against Monu @ Manoj and Madan Lal @ Badal. Learned Trial Court has also taken cognizance in the case and charge has been framed against both the accused i.e. Monu @ Manoj and Madan Lal @ Badal. The complainant Jitender @ Jitu has also been partly examined in chief and the case is pending for trial. It is submitted that the sentence

imposed by the Jail Superintendant is in accordance with law. It is, however, submitted that even if the petitioner was not chargesheeted, it does not mean that he has not committed any offence. He has, therefore, prayed for dismissal of the present petition.

6. I have considered the rival submissions and perused the record. The detailed investigation has been conducted by the police officials of PS Hari Nagar and thereafter a chargesheet has been filed against the accused Monu @ Manoj and Madan Lal @ Badal. During the course of investigation, it has come on record that injuries were caused to the petitioner by the abovesaid accused persons and no role has been attributed to the petitioner Salim. It is specifically stated in the status report that during the course of investigation in the said case, no role of the petitioner (Salim Hussain) was found in causing the injuries to the complainant Jitender @ Jitu. Petitioner has not even been chargesheeted by the police in the said case. Ld. Trial Court has taken cognizance of the offence. Charges have been framed against the accuseds Monu @ Manoj and Madan Lal Badal. The

complainant Jitender S/o. Daljeet has been partly examined. In view of the above facts appearing on record, the order dated 16.04.2017 passed by the Dy. Superintendent, Central Jail, Tihar, Delhi cannot be sustained in the eyes of law and same is set aside, in the interest of justice and jail authorities are directed to award the remission if any, earned by the petitioner which was stopped due to punishment inflicted upon him by the Dy. Superintendent, Central Jail, Tihar, Delhi vide order dated 16.04.2017. The present petition is disposed of accordingly.

JANUARY 13, 2020.

BRIJESH SETHI, J

