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

+ **W.P.(CRL) 426/2023**

RADHEY SHYAM

.....Petitioner

Through: Mr. Vishesh Wadhwa, Mr. Shubhang Singh, Mr. Shivam Dahiya & Mr. V. Mishra, Advocates.

versus

STATE NCT OF DELHI

.....Respondent

Through: Ms. Rupali Bandhopadhyaya, ASC, Crl. with Mr. Abhijeet Kumar, Advocate for State.
S.I. Ankur Kardam, PS Tilak Nagar, Delhi.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

09.08.2024

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1. The present Petition under Article 226 of the Constitution of India read with Section 482 of the Code Criminal Procedure, 1973 has been filed on behalf of the petitioner seeking the following reliefs: -

“a. Issue a writ in the nature of certiorari quashing the Punishment Ticket No. 01 dated 26.12.2021 & Order No. F.10(3479689)/CJ/LEGAL/2022/4146 dated 22.07.2022 passed by the respondent,

b. Issue a writ in the nature of mandamus directing the respondent to release the petitioner on 1st Spell of Furlough of 03 weeks.”

2. The impugned Punishment Ticket dated 26.12.2021 and Order dated 22.07.2022 have been challenged on the ground that the petitioner was unable to surrender himself on time after the Emergency Parole as he had no intimation of date of surrender before the Jail Authorities. Every time when



he called the Jail Authority, he was informed that he need not surrender and his Emergency Parole was being extended from time to time. Therefore, non-surrender from the Emergency Parole was inadvertence on the part of the petitioner and the same happened due to the confusion created during the COVID-19 Pandemic.

3. The petitioner was always ready to abide by the conditions of the Emergency Parole and the consequent rejection of Furlough by the Jail Authority, is not sustainable as the respondent failed to appreciate that the petitioner availed Parole four times and Furlough seven times and on every occasion after availing the same, he surrendered himself to the Jail Authority on time and never misused the liberty so granted to him.

4. Learned counsel for the petitioner has placed reliance on the decision in Re: Contagion of COVID 19 Virus Imprisons vide Suo Moto Writ Petition (C) 1/2020, wherein the Apex Court vide Order dated 16.07.2021 had directed that so far as those prisoners who have already been released on bail from the prison by virtue of Orders passed by this Court from time to time on the basis of recommendations of High Powered Committee constituted for the purpose are concerned, they shall not be asked to surrender to the prison, until further Orders.

5. Learned counsel for the petitioner has also placed reliance on the decision in Sultan @ Rajesh vs. State of GNCT of Delhi, decided vide W.P.(Crl) 764/2022 by the Co-ordinate Bench of this Court on 03.06.2022, in support of his assertions.

6. It is also submitted that the respondent has failed to appreciate that while rejecting the Furlough, the petitioner has already earned three Annual Good Conduct Reports (AGCRs) and he was fully entitled to Furlough, the



Punishment Ticket No. 01 dated 26.12.2021 was wrongly issued.

7. It is further submitted that due procedure of Delhi Prison Rules, 2018 has not been followed while issuing the Punishment Ticket No. 01 by the respondent and subsequent rejection of the Furlough of the petitioner.

8. Therefore, the Punishment Ticket No. 01 dated 26.12.2021 and Order dated 22.07.2022 rejecting the Furlough of the petitioner, be set aside.

9. **Ms. Rupali Bandhopadhyia, learned Additional Standing Counsel** on behalf of the State submits that due procedure has been followed in issuing the impugned Punishment Ticket No. 01 dated 26.12.2021 and in rejecting the Furlough of the petitioner *vide* Order dated 22.07.2022.

10. It is submitted that the Furlough of the petitioner was rejected *vide* Order dated 22.07.2022; since then, two years have elapsed and the petitioner is now entitled to apply for Furlough afresh.

11. **Submissions heard.**

12. The Punishment Ticket dated 26.12.2021 issued by the Jail Authorities reads as under: -

S.No.	Punishment Ticket Date	Remarks	Punishment
1.	26.12.2021	The date of surrender of petitioner was fixed for 06.03.2021. However, the petitioner failed to surrender on due date and jumped the emergency Parole.	<i>Mulakat/e-Mulakat of the petitioner was stopped for 30 days.</i>

13. Rule 1271 of the Delhi Prison Rules, 2018 defines punishment which



reads as under—

“Rule 1271 — The following punishment(s) may be awarded by the Superintendent to prisoners for committing any prison offence. These are classified into minor punishments and major punishments.

(a) Minor Punishments

I. Formal warning which shall be personally addressed to the prisoner by the Superintendent and recorded in the punishment book.

II. Loss of privileges given to the prisoners in detention for a maximum of one month.

III. Forfeiture of earned remission up to ten days.

(b) Major Punishments

I. Forfeiture of remission up to a period of thirty days at any one time or with the approval of the Inspector General remove a prisoner from the remission system up to a period of six months; Provided that the Inspector General shall have power to forfeit all earned remissions, other than remissions given by the Government, or to remove a prisoner from the remission system for the entire period of his imprisonment;

II. Stoppage of recreational facilities up to a period of one month or canteen facilities for a period of 1 month or stoppage of interviews for a period of up to three months;

III. In case of breaches and violations in conditions of release on Parole or Furlough, not counting the said period towards imprisonment.

IV. Segregation up to a period of three months and with the sanction of the Inspector General, up to a period of six months.

V. Monitoring under watch and security.

VI. In case of any damage to Government property, recovery of cost for such damage after proper enquiry effective with judicial appraisal.

VII. Inmate calling system stoppage up to 1 month.

VIII. Forfeiture of recovered/seized money.”



14. In the present case, the sentence imposed is “*mulakat/e-mulakat of the petitioner was stopped for 30 days*” is “*major punishment*” as defined above.

15. The procedure for awarding the punishment has been defined under Rule 1272 of the Delhi Prison Rules, 2018 which reads as under: -

“Rule 1272 — For award of major punishment the prisoner should be given notice in writing, calling him to show cause with reference to the alleged violation of the Jail rules. The order of punishment should also be communicated to the concerned prisoner.”

16. According to Rule 1272 of the Delhi Prison Rule, 2018, there must be a “*Show-Cause Notice*” given to the convict and “*the opportunity*” be given to him to explain the charge framed against him; only after considering his response, should the punishment be inflicted.

17. As is reflected from the record of the respondent itself, it had merely put the allegation and had awarded the sentence. There is no Show-Cause Notice served to the convict-petitioner before awarding the punishment. The Jail Authority has given a complete go-bye to the procedure as mandated under Rule 1272 of the Delhi Prison Rules, 2018, and no right of hearing has been given which is not only violate of defined procedure, but is also violate of Principles of Natural Justice. The petitioner has been condemned unheard.

18. It is pertinent to observe that according to the Punishment Ticket dated 26.12.2021, the date of surrender of petitioner was fixed for 06.03.2021, but the petitioner failed to surrender on due date and jumped the Emergency Parole.



19. It may be noted that according to the petitioner, he was unable to surrender on time after the Emergency Parole as he had no intimation of date of surrender before the Jail Authorities. Moreover, every time when the petitioner called to jail, he was informed by the Jail Authority that he need not surrender and his Emergency Parole was being extended from time to time.

20. The respondent should have given an opportunity to the petitioner by way of a Show-Cause Notice seeking explanation as to why he was not able to surrender on time. The denial of issuing the Show-Cause Notice and simply imposing punishment on the petitioner on the allegations is nothing but the denial of the right of fair hearing and an opportunity of being heard. Aside from this, though the respondent has claimed that it had duly informed the petitioner about the date of surrender but it is conspicuously silent about the manner in which the date of surrender was communicated to the petitioner.

21. Moreover, there is no supporting document or any other details which have been furnished on behalf of the State while imposing the major punishment on the petitioner thereby stopping his *mulakat/e-Mulakat* for a period of 30 days to explain when was the date of surrender given and how it was communicated to the petitioner who, despite being informed, failed to surrender by the given date.

22. To conclude, on account of not following the appropriate procedure for inflicting the aforesaid major punishment as detailed in Rule 1272 of the Delhi Prison Rules, 2018 and also, the petitioner was unable to surrender himself on time after the emergency Parole as he had no intimidation to this effect and when he called the Jail Authorities, he was informed that he need



not surrender as the emergency Parole was being extended from time to time.

23. Moreover, the petitioner whenever granted Furlough and Parole surrendered himself on time and never jumped the same and also the petitioner has already earned three Annual Good Conduct Reports (AGCRs) and he is fully entitled to Furlough.

24. In view of above, the present petition is allowed and the Punishment Ticket dated 26.12.2021 as well as the Order dated 22.07.2022 *vide* which the Furlough of the petitioner was rejected, are hereby set aside. The petitioner is at liberty to file the Application seeking Furlough afresh which shall be decided by the Jail Authority within 15 days from the date of filing of the Application.

25. Needless to state that if the petitioner is still aggrieved by the rejection of his fresh Furlough Application, he may approach this Court in accordance with law.

26. Accordingly, the present petition is disposed of.

NEENA BANSAL KRISHNA, J

AUGUST 9, 2024

S.Sharma